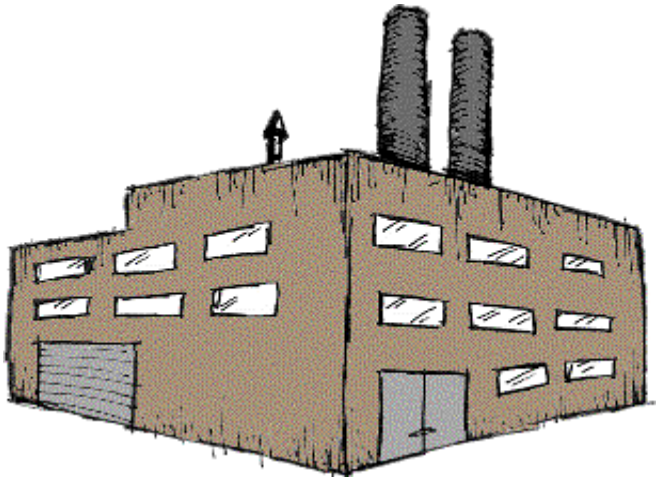
Waste Site Remediation Permit

Streamlining Task Force Report



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Acknowledgements

The Department of Environmental Management started its review of the Office of Waste Management Program in February 2001. We sent out about twenty letters to interested parties and requested their help in reviewing the DEM Office of Waste Management's site remediation program. The Waste Site Remediation Permit Streamlining Task Force grew and over thirty-five people volunteered their time to assist the Department of Environmental Management in this effort.

The DEM would like to express its gratitude to all the members of the environmental, municipal and regulated communities, program staff, growth and watershed organizations along with and state agencies who participated in this review process. It was only through their time and energy that this report could be developed.

The recommendations of this report, for the most part, were generated by the output of the working groups. John Hartley and Leo Hellested led these groups. It was through their efforts, the groups were able to develop the consensus needed to generate recommendations to the full Task Force.

Special thanks goes to Garry Waldeck, Kelly Owens, Paul Kulpa, Leo Hellested and Terry Gray for their hard work in guiding the technical analysis of the Task Force and the Final Report.

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Waste Site Remediation Permit Streamlining Task Force Final Report

I. EXECUTIVE SUMMARY

The Department of Environmental Management is committed to improving its performance on an ongoing basis. As part of this evaluation process, DEM initiated a Task Force that brought together Department staff, the regulated community and other interested parties to identify streamlining goals and strategies. The purpose of this Task Force was to discuss to what extent statutory, regulatory, policy or administrative changes are necessary to streamline the regulatory process without compromising our environmental mandate, and especially to expedite the cleanup and reuse of contaminated properties.

The Waste Site Remediation Permit Streamlining Task Force met six times this year from February to July to review the manner in which the Office of Waste Management processes submissions for site remediation. The group also focussed on the Brownfields program and evaluated ways to encourage the remediation of these sites. As a result of these meetings and subsequent meetings at the working group level a number of recommendations have been made to improve the existing site remediation process.

The report will consolidate the findings of the Task Force and the working groups that evaluated the specific issues of concern. As a result of these meetings, a number of significant policies and administrative issues were finalized that will clarify DEM's policies and will serve to streamline the review process. The changes include:

- Revisions to the DEM Arsenic Policy - The Direct Exposure Criteria for arsenic for Industrial / Commercial will be raised from 3.8 mg/kg to 7.0 mg/kg. The existing arsenic policy will remain in place until the regulation is changed and be replaced by the revised arsenic policy after the regulation change is promulgated.
- Development of a Marginal Risk Policy - Implementation of the Marginal Risk Site policy will streamline the way DEM reviews projects that do not pose significant environmental or human health risks. The proposed policy encourages the removal of waste material and sets information requirements for the Site Investigation Report and presumptive remedies that should be used at the site. Applications that adequately address these requirements will be reviewed by DEM within 42 days.
- Development of a pilot program to clean up distressed properties that uses a partnership of DEM, private environmental consultants and the attorneys working on distressed properties,
- Development of a Checklist that can be used to increase submission quality and,
- Development of three model Settlement Agreements - The legal approval process should be streamlined by the use of the model Settlement Agreement. Three model Settlement agreements are being developed, i.e., for two parties, three parties and distressed properties. This document outlines the legal procedures and protections needed to move forward in the site remediation process.
- Issues relating to communication between staff and the stakeholders were discussed at length. DEM will meet with the stakeholder community to discuss issues of concern on a regular basis to improve communications between the groups.

In addition, there were also recommendations made for DEM to consider that may help to improve the process in the future and are detailed in Section V of the report.

II. INTRODUCTION

In January of 2001, DEM formed a Waste Site Remediation Task Force to investigate specific administrative, policy, regulatory and statutory changes that could be implemented to streamline program operations, increase customer satisfaction and meet the mandates of the law. This Task Force evaluated certain aspects of the Office of Waste Management's programs that that deal with site remediation.

The Office of Waste Management is responsible for ensuring that contaminated properties are properly cleaned up. This Office evaluates properties that have been contaminated by prior industrial, commercial, military or governmental activities. Clean ups can be conducted under the authority of federal and state programs whose overall goal is to return property to safe use. The focus of this Task Force was the State Site Remediation Program, which includes the Brownfields redevelopment projects.

The DEM Waste Site Remediation Task Force consisted of members (Appendix A) of the affected regulated, environmental and legal communities. Other representatives included state, municipal and federal agencies and members of the DEM staff.

The Task Force usually met on the fourth Thursday of each month from January to September 2001. At the first meeting, the Task Force developed a list of issues to be evaluated. The concerns raised were grouped into three specific areas and were then assigned to a working group consisting of members of the Task Force for detailed analysis. Appendix B is a listing of the issues of concern that were raised by the Task Force members.

Due to the amount of information that was being generated by the working groups, it was determined that the web format would be effective in keeping all the Task Force members appraised of the process. The record of the Task Force and working groups meetings were posted on the DEM web-site located at the following address:

http://www.state.ri.us/dem/programs/ombuds/pstream/waste/index.htm

III. SUMMARY OF ISSUES

As a result of the first meeting, fifty-four issues of concern were identified for further evaluation. These concerns were evaluated at the working group level and to a lesser extent, at the Task Force level to evaluate these suggestions. These issues of concern were then grouped into four main categories, i.e., Brownfields, Regulatory, Administrative and Arsenic. There were three working groups set up initially to discuss theses concerns.

Brownfields Working Group

There were seventeen issues of concern that were identified as impacting the Brownfields program. Appendix C identifies these issues. In a broad sense these concerns identified seven primary topics, i.e.,

- **Streamlined Submission Processing** - Possible changes to the review process for evaluating sites and another that could be used to evaluate submissions that could be characterized as "simple sites". (Although identified in this workgroup as a concern, the majority of the work in developing a Marginal Risk Policy was performed in the Regulatory and Administrative Working Group.).
- **Distressed Properties** - DEM needs evaluate its process concerning distressed properties, i.e., those properties in bankruptcy, receivership or about to be placed in those categories.

- **Settlement Agreement** - The DEM should review its existing review processes for possible efficiency improvements.
- **Staffing** - Staffing levels and the regulatory culture need to be evaluated to determine if there are necessary resources and attitudes to support the Brownfields program.
- **Local Government Interactions** - The role of local governments needs to be refined with respect to enhancing their ability to work on Brownfields projects. DEM should evaluate its notice requirements to include local governments. In addition, it should encourage developers to work with local governments at an early stage of the project.
- **Outreach** - The need to develop outreach activities that ensure effective public involvement / participation.
- **GrowSmart RI Recommendations** - The GrowSmart RI organization held a Brownfields conference in the winter of 2001. As a result of this conference a number recommendations were generated and the Task Force wanted to review these recommendations for possible implementation.

The Regulatory and Administrative Working Group

This working group was tasked with reviewing twenty-nine issues. The working group realigned these issues and they can be reviewed in Appendix D. These issues were grouped into six areas, i.e.,

- **Consistency between Programs** – Regulations should be updated and coordinated, especially the Underground Storage Tank, Aboveground Storage Tank and the Oil Pollution Regulations.
- **Completeness of Submittals** – Application quality needs to be improved. DEM should evaluate the need for consultant training, the development of administrative checklists and outreach and guidance materials that would help explain the regulatory requirements.
- **Streamlining Opportunities** – DEM should consider changing the regulations to allow additional flexibility, especially for those considered being "simple sites."
- **Environmental Equity** – The regulations should be reviewed to ensure that environmental equity issues are addressed in the Office of Waste Management's programs.
- **Fee Structure** – Evaluate the existing fee structure to allow fees be used to support the actual cost of reviewing submissions. Allow fees and funding to be used to hire outside technical support as needed.
- **Staffing** – Evaluate the staffing needs of the Office of Waste Management to determine if there is sufficient trained staff to run the program.

Arsenic Working Group

It was initially thought that a third working group would be formed to evaluate Arsenic issues. DEM had previously convened a stakeholder group that examined this issue. Many of the members of the Regulatory and Administrative Working Group had worked on this issue in the past, so a new working group was not started. Other members of the previous stakeholder group were invited to attend the Task Force and Working group meetings when this issue was discussed. The main issues of concerns (Appendix E) on the arsenic issue include the following:

- ✯ Background – Provide more guidance in determining background levels. Review epidemiological data and information that was used to set background levels in RI.
- ✯ Arsenic Standards - Review the standards for residential, commercial and industrial use.
- ✯ Review of DEM / DOH roles in regulating public health concerns.

IV. WORKING GROUP DISCUSSIONS

Brownfields Working Group

The Brownfields working group met seven times to discuss issues of concerns. The following is a summary of the topics discussed:

Streamlined Submission Processing / Processing Issues

The group developed an "ideal process" to work through a Brownfields project submission. Critical to the ideal process was a pre-application meeting. Any parties considering a project located on a Brownfields site are encouraged to attend a pre-application meeting. It was suggested that a checklist should be developed that outlines the types of information that should be discussed at the pre-application meeting to make sure that meeting is productive. The person planning the project (the applicant) should be clear about the future use of the property, a realistic timeline for their project, and what environmental information they had collected and issues they had identified. Applicants will get from the process what they put into it, so solid information should lead to a productive discussion. During the meeting, the Department should:

A) Identify any issues that DEM feels are critical, or priorities,
B) Identify any program preferences on how certain issues are addressed where the regulations allow latitude and discretion, and,
C) Clearly communicate what DEM expects in the next submittal.
D) Meeting notes should be disseminated within 10 days of the meeting so that any miscommunications or misunderstandings can be identified before the project progresses further. This pre-project or pre-application meeting should be scheduled following the initial notification on the site.

There was some discussion on the need to develop a procedure to allow sites that posed a marginal risk to be evaluated under a streamlined structure. The Regulatory and Administrative Working Group was actively working on this process. The full Task Force accepted the recommendations from that working group and agreed that this process could be applied to appropriate Brownfields sites. The policy will be described below in more detail, but it allows for an expedited review (42 calendar days, excluding the settlement agreement) of a complete submission along with the use of one of the approved remediation techniques.

A model Settlement Agreement (Appendix F) was developed and distributed for comments. DEM is in the process of revising the document based on the comments received at the meeting where this document was reviewed. Two additional Settlement Agreements also need to be developed, i.e., for three parties and for distressed properties, based on the two party document that has been circulated. Use of the model Settlement Agreements will expedite the

legal review process since submittals will follow a format that has been previously approved by the Office of Legal Services.

Marketing of Brownfields sites require an up to date inventory. GrowSmart RI planned to hire an intern to begin to develop an inventory from existing databases. An inventory of potential sites could be useful in having these sites proposed for clean up.

OWM was encouraged to develop a policy on urban fill that allows remediation to occur in an expedited manner. This policy should encourage site reuse and discourage urban sprawl. After reviewing this concern, the Marginal Risk policy was developed that should address a lot of the issues concerning the urban-fill problem. The expedited review timeline will encourage the reuse of these sites.

The public notification process was reviewed to determine the appropriate level of public involvement, i.e. public hearing vs. public notice. There are three public notice requirements in the site remediation process, i.e., at the time when a responsible party initiates an investigation at a site; when the investigation is completed and a remedy is proposed, and, if and when a Brownfields Settlement Agreement is entered.

The first requirement for notice is at the time of initiation of an investigation, and is interpreted as being applicable in cases where the DEM had compelled the investigation through a letter, notice or order. However, this requirement does not yet apply if the investigation is initiated at a time when there is no information that makes the site jurisdictional. Public notification at this stage of a project is rarely done.

The second notification occurs at the time of completion of the investigation and when the remedy is proposed. Notice is only required to abutters to the project site. This notice should be expanded to include all tenants of abutting properties and notification to the municipal government and watershed groups.

The performing party publishes the notice concerning the Settlement Agreement in the legal notices of the newspaper. In these cases, it may be necessary to amend the regulations or for DEM to take the lead on facilitating more public involvement.

Distressed Properties

Distressed properties, i. e. those properties that are in the process of being abandoned or are undergoing bankruptcy proceedings or are in receivership can be problematic in resolving environmental concerns. In many instances, these properties may be responsible for environmental contamination. Once these properties are abandoned, there are usually no resources to resolve the environmental problems. Therefore it is in the public interest to have viable businesses operate on these premises in order to resolve outstanding environmental problems.

Once a property has been assigned a receiver, it is important that all environmental concerns be identified in the early stages of the site investigation. If a property is to be marketable, potential buyers need to understand the condition of the site and all DEM regulatory requirements. In the event there are financial resources available, the receiver needs to determine if there are sufficient resources available to begin to stabilize the site or to abandon it.

A property that is undergoing a court-directed process, i.e. bankruptcy or receivership, has different needs than a piece of property that is being traditionally marketed. The time

constraints and limited financial resources require these properties to be handled in a different process.

DEM staff met with a few members of the Rhode Island legal community who have extensive experience in working with distressed properties. As a result of this meeting, a number of issues were discussed concerning ways to improve the existing DEM regulatory program that impact these properties. Topics discussed included fiscal resources, the process to review the properties and regulatory flexibility.

Fiscal Resources

One issue raised was the inability of receivers to characterize the environmental aspects of a site. In many instances there are no resources available to determine if there is an environmental problem at a site. Receivers may be able to work with the banking community to remove imminent hazards or to fund a "Phase 1" report. This report can trace the sources of spills that could contribute to potential environmental problem at a site. In some instances, there may be analytical data that provides additional information that helps to characterize the site. It is fairly typical for the "Phase 1" report to indicate that more information is needed to determine the site condition. Unless fiscal resources can be found to characterize a site, the property will be difficult to market and could be abandoned, thus contributing to the inventory of Brownfields sites.

DEM has some limited EPA funding that could be used to pay for the analysis of environmental samples from distressed properties. However, it is often not practical, or cost effective to use these resources to package this information into a report that would characterize the site and recommend the site remediation activities. In order to develop a report, it was suggested the receiver could partner with the Rhode Island environmental professional consulting community and DEM. This team could provide information to generate a report that would characterize a site that had good marketability potential. DEM would be responsible for collecting environmental data from the site and the consultant would prepare the report that would detail the site information and potential remedies. The expenses of the consultant and DEM could be reimbursed at the time of the sale of the property. Since these are administrative costs of the receiver, these expenses would have a higher priority for reimbursement. Reimbursement of DEM expenses would allow this funding to be recycled into other distressed properties projects. This approach could be successful if the Rhode Island consulting community is willing to assume some of the risk of the redevelopment project by carrying the expense of developing the site characterization report until the site is sold.

Once the property has been characterized, there may be a need to remediate environmental problems. This responsibility could be undertaken by the ultimate purchaser of the property or could be conducted by the receiver if there is funding available to do this work. In the event funding is not available, the receiver could apply for remediation grants that are being distributed by the Rhode Island Economic Development Corporation (EDC). The EDC is administering a one million-dollar revolving loan program to remediate Brownfields properties using funding provided by the U. S. Environmental Protection Agency. That program also has the ability to provide grants under certain circumstances.

DEM should develop a pilot program for the remediation of distressed Brownfields properties. This pilot program could be based on a partnership where the receivers could identify potential distressed properties, DEM could use an existing federal grant to pay for analytical work and the environmental consulting community would prepare a report that details the

extent of contamination and possible remediation alternatives. If this site meets the criteria of the existing EDC program, remediation could move forward. If this pilot is successful, DEM and its partners could propose that this model be funded with state resources.

Distressed Properties Review Process

Time is a critical factor in determining if a distressed property will be developed or abandoned. Receivers need to determine the environmental status of the property and DEM's regulatory requirements in a timely manner. In order to work with the distressed property community, DEM should revise it process for the review of these properties, in the following manner:

The Office of Waste Management should designate a lead contact person who will be responsible for coordinating meetings with the receiver and all appropriate DEM offices that have regulatory oversight of the property. The purpose of the meeting is to determine the regulatory requirements and any legal time-lines that are being imposed on the distressed property.

Within ten days of the initial meeting, the regulatory requirements will be identified and forwarded to the receiver. A subsequent meeting can be held to discuss the possible use of funding sources mentioned above and to discuss site remediation alternatives. If there is agreement on the remediation of the site, the parties will need to work on a settlement agreement.

DEM has developed a model settlement agreement. This document needs to be revised for distressed property. DEM will modify this document and develop a generic settlement agreement that reflects the appropriate liability protection to the receiver.

In order to increase the number of distressed properties cleaned up, DEM should work with the distressed properties legal community. One way to accomplish this is to discuss this issue using the Rhode Island Bar Association's committee structure, i.e. the Environmental Law and Debtor/Creditor committees. Information on this topic will also be included on the new DEM / EDC Brownfields Website located at:
http://www.ribrownfields.org

Regulatory Flexibility

One important aspect of the site remediation process is setting groundwater objectives. It was noted that DEM should be flexible in the design of remediation goals, especially when projects are located in GB groundwater areas (areas where groundwater objectives are not being met) that use public water supplies.

Clean up of distressed properties is dependent on the certainty of the costs of remediation. The placement of a maximum cap on cost of the remediation of these properties was discussed, and it was noted the partial clean up of an existing business that purchased a distressed property was better than the deterioration of a site that was abandoned. DEM thought this would be a difficult policy to implement. Another way to place certainty into the process would require a distressed property to establish an escrow fund and an environmental insurance policy. The remediation alternative would tie these two instruments to the results of objectives of a groundwater-monitoring program that would trigger future remediation activities. If monitoring showed the plume, for example was naturally attenuating and was not

causing off site impacts, then the escrow and insurance requirements could be relaxed or eliminated after an agreed upon time. If the problem did not attenuate, the combination of the escrow fund and the insurance could be used to clean up the site.

The issue of the cost of environmental insurance was discussed and it was DEM's position that the cost of these policies was becoming more affordable. DEM is scheduling a meeting with a major carrier of this insurance to determine the feasibility of this idea.

Staffing

The Task Force discussed staffing levels in a number of meetings of the working groups and the Task Force itself. Initially there was sentiment to have Brownfields projects be handled by a separate staff / process. It was suggested that Brownfields projects need personnel who are advocates for redeveloping properties, in addition to cleaning up these sites. DEM staff who are working on site cleanups based on enforcement issues are not in a position to advocate re-development.

DEM mentioned that it is also looking at staff reorganization. There are two approaches being considered. In the first instance, DEM could create a unit that only does Brownfields projects. In the second approach, DEM could balance the workload of Brownfields projects among the staff and manage the caseload. In the second approach, DEM could manage an influx of projects and would not rely on just a few people to review these projects. After much discussion there was no firm consensus on the appropriate approach other than DEM staff needs to work effectively to get all sites cleaned up in an expeditious manner.

Another issue of concern raised was DEM did not have sufficient personnel to adequately address Brownfields sites. This problem will be exacerbated when the state begins to actively market the program. The group was initially informed that two additional staff would be hired to work on this program. The Office of Waste Management filled the supervisor position this summer with a current DEM employee creating a vacancy that needs to be backfilled. At he present time there are still two positions that need to be filled, but due to budgetary constraints, they are not likely to be filled in this fiscal year. DEM, however, is working with the budget office to develop a sustainable solution to fill these two positions. Review times should improve with the addition of these two positions and implementation of the Marginal Risk Policy, the model Settlement Agreement and the Arsenic Policy. The group remained skeptical that these initiatives would free up personnel needed to process Brownfields sites that would result from an increased marketing program.

DEM was questioned if the regulatory culture was conducive to goals of the Brownfields program. In order to address this issue DEM will adopt a policy statement (Appendix K) that indicates Brownfields projects are a priority. To increase customer service, OWM will place a greater emphasis on pre-application meetings. In addition, the Marginal Risk Policy will also be applied to Brownfields projects, where applicable, and will streamline the approval process.

Local Government Interactions

A concern was raised that there should be better coordination of the Brownfields program between DEM and the local governments. DEM has been proactive in the past but has had difficulty in getting the attention of the local governments on this issue. Letters had been sent to local governments indicating DEM's willingness to work with them on Brownfields issues. There was not a large response to this offer for help. However, DEM is willing to press forward with its efforts and will work with EPA on these efforts. RIDEM and EPA are

available to have Brownfields informational meetings with municipalities upon request. Furthermore, RIDEM is considering taking a more proactive approach to these meetings.

One concern raised, requested DEM to increase the capacity of local governments to handle Brownfields issues. A first step in this capacity building effort is to determine the extent of the problem. DEM needs to gauge the municipality's interest either in building their own capacity or with working with a strong centralized state program. In addition, efforts will be focused on working with the municipalities to create an inventory of potential Brownfields sites in their jurisdiction and then have these sites included in their comprehensive plans. In addition, DEM will work with EPA to meet with the municipalities to determine the needs and interest of the municipalities to get involved with the Brownfields program.

Outreach Concerns

- DEM should conduct a public outreach program that explains the goals of the program. In addition, OWM should develop simple brochures covering such topics as "What are Brownfields?", "How to Hire a Consultant" and "How to Address Environmental Contamination".

  These types of brochures would be helpful since the information on how to proceed with a Brownfields project may not be readily be available. This information would also help stakeholders promote the program. A lot of this material is currently located on the new Brownfields website. Additional work needs to be done to transform this information to a brochure format.

  A draft copy of a "How to Hire an Environmental Consultant" was developed and discussed at a Task Force Meeting. This document will be revised based on these comments and will be distributed.

- The Brownfields process should be explained on the web. DEM has been working with the Economic Development Corporation to post a new website that is dedicated to Brownfields. The website is located at the following location: http:\\www.ribrownfields.org

  This website will be broadened to include a number of geographical overlays and will ultimately include the capacity to locate information about a site through a query function that will be built into the website. This site should address most of the issues discussed regarding educating the general public concerning the Brownfields process.

- DEM should co-host a workshop on " Improving the Quality of Submissions". DEM has developed a checklist that should address some of these problems, but the consultants in the task force thought this could be an element in a workshop that discusses case studies about approaches that worked/ did not work.

- The Rhode Island Society of Environmental Professionals (RISEP) will coordinate with DEM and perhaps the RI Bar Association, a training course that addresses some of the issues that were raised by the Task Force, such as application quality.

GrowSmart RI Recommendations

One meeting was dedicated to review the GrowSmart RI (GSRI) recommendations (Attachment G) for possible implementation. Not all the recommendations were directed towards DEM, so these issues were not discussed at length. The following discussion is an update on DEM's progress with implementing the recommendations:

- **STRENGTHENING STATE AGENCY ORGANIZATION AND STAFFING**

  GSRI Recommendation - Reorganize DEM's approach to Brownfields to serve site cleanup projects more efficiently.

  DEM's has organized a task force of stakeholders to work with the department on streamlining permitting and strengthening the program. A number of conference attendees serve on the task force. GrowSmart RI has attended task force meetings and has participated in the Brownfields Working Group. As mentioned above, DEM is also in the process of filling two staff vacancies. The people hired will work on Brownfields projects. DEM has also named Kelly Owens as the Brownfields point of contact for Brownfields issues.
  A Legislative Study Commission is being formed to that may evaluate the staffing needs for an expanded Brownfields Program. At the present time there is an effort underway to market the program, but there are few new agency staff resources to support significant increases in workload

  GSRI Recommendation - Assign at least one or two more full time staff to Office of Waste Mgmt for Brownfields program.

  DEM and EDC have identified a central point of contact within each agency to respond to Brownfields inquiries. EDC point-of-contact Adrienne Southgate and DEM point-of-contact Kelly Owens are in communication to ensure that all requests for information can be fielded by either agency. Hiring two additional staff to work on Brownfields projects may be problematical in the next fiscal year due to budget considerations. DEM, however is working with the legislative branch to resolve long-term sustainability of the program.

  GSRI Recommendation - Explore developing a Licensed Environmental Professional (LEP) program for Rhode Island.

  GrowSmart RI has encouraged the Society of Environmental Professionals to consider forming a task force to undertake this exploration. This issue has been discussed at length at both the Task Force and working group level and there is little support in the consulting community for this approach. The development and implementation of the Marginal Risk Policy that requires DEM to make decisions on submissions within forty-two days was also a consideration not to move forward with the LEP program.

  GSRI Recommendation - Written materials also need to be upgraded. We urge DEM and EDC to establish specific deadlines for upgrading their communication materials and to allocate resources within their budgets to bring in outside consultants to develop the web site and achieve effective and expeditious changes in printed materials.

  DEM and EDC are jointly developing a Brownfields web site, www.ribrownfields.org The website went on-line in October 2001. This will be a dynamic site and will be expanded and enhanced over the next few months, and is designed to meet the needs of developers, current property owners, municipalities, and citizens. The web site will include

information on assessment and remediation regulations, model settlement agreements, financial tools, and eventually will link to a searchable inventory of sites in Rhode Island.

The Brownfields Task Force has had some discussions of printed materials needed, and DEM is developing information concerning an explanation of the program, application checklists, simplified description of the application process, how to hire an environmental consultant etc. In addition, EDC will be hiring a marketing firm to develop an updated brochure that explains the program.

GSRI Recommendation - Develop a statewide inventory of potential redevelopment sites

GSRI hired a graduate student this summer to work on the inventory and an advisory committee was formed with members from DEM, EDC and the Office of Statewide Planning to assist him. The inventory that will ultimately be developed will be an effective marketing tool that can be used by other organizations. This Inventory can ultimately provide a description with known environmental and economic conditions at these sites.

- **PROTECTION AGAINST LIABILITY**

  GSRI Recommendation - Provide statutory relief for municipalities, redevelopment authorities, and community development corporations

  There was considerable discussion of this point at the meeting. There was consensus that municipalities, redevelopment authorities and community development corporations may not be protected from liabilities when they take title or control contaminated properties. This may be a good issue for the proposed legislative commission to explore.

- **COORDINATION BETWEEN STATE AGENCIES AND MUNICIPALITIES**

  GSRI Recommendation - DEM and EDC need to work with municipalities

  DEM and the EDC have sent out a joint letter to cities and towns offering to meet with individual municipalities to provide information about the Brownfields program and assistance currently available. Unfortunately there was no response to these offers. In addition, they plan to hold regional information meetings for municipal government representatives. GSRI will assist in planning and facilitating these meetings.

- **ARSENIC LEVELS**

  GSRI Recommendation - DEM should raise standard for reporting arsenic concentrations

  DEM has reviewed the current Arsenic Policy and the results of its six-month pilot program. The Department was able to approve all submissions by applicants. In addition, DEM will modify its regulations to reflect the proposed changes that resulted from this pilot program and discussions held by the Task Force. (For further information on this topic, review the discussion on Arsenic in this report.)

Regulatory and Administrative Working Group

The Regulatory and Administrative Working Group met three times and were charged with working on thirty-one issues (Appendix D). These issues were grouped into six primary areas, i.e., Consistency between Programs, Completeness of Submittals, Streamlining the Process, Environmental Equity, Fee Structure and Staffing.

Consistency between Programs

There was a general discussion on differing approaches to clean up sites and notification requirements between DEM's regulatory programs. Some of this difference is caused by the philosophy of the programs, i.e. enforcement versus voluntary clean-ups. The differences between the LUST and Site Remediation programs were noted. DEM investigations conducted under the Site Remediation program typically deal with a number of contaminants that are spread over a site. The LUST program is mandated to only focus on releases from tanks. There was general agreement that different sites, depending on the controlling regulatory program will require different standards, which was understood. The group thought that the final approval letter was key and we should work to have DEM issue a final letter that works for all the programs. DEM explained that the approvals issued by the Site Remediation program are more inclusive since they are dealing with a broader scope of pollutants. The final letter from the LUST Program is conditional, given the narrower type of investigation. Other issues discussed under this topic include:

- The list of programs in the issue of concern is incomplete. Besides Underground Storage Tank (UST), Leaking Underground Storage Tank (LUST) and Oil Pollution Control Regulations (OPC), we need to broaden our thinking to include Underground Injection Control, Groundwater, and Hazardous/Solid Waste regulations.

- Consider developing fact sheets or policy statements that detail DEM's procedures for interaction between programs and clarification of reporting and remediation standards between RIDEM programs.

As a result of the working group meeting, the inconsistencies of the Oil Pollution Control Program were pointed out and the existing regulation was redlined to include new contact information etc. This could be the first step in revising DEM's regulations. However the group thought it could be useful to continue this discussion in the future and requested that DEM should form a working group to review these regulations. The OPC regulations especially need to be updated to outline the existing regulatory framework, especially with respect to the portion of the existing regulations that are enforced by the Coast Guard. There may also be some value in reviewing the regulations to develop a "tanks" regulation that combines the OPC, UST, and LUST programs.

This more detailed review can address the issue raised concerning the need to have consistent remedial objectives. This issue was discussed and it was recognized that there are some differences in the remedial objectives in the programs. DEM should, however, at least develop guidance on appropriate clean up protocols for petroleum products that are consistent between programs.

Completeness of Submittals

One impediment to a streamlined review process is the quality of the material submitted to DEM for review. Efforts need to be taken by DEM to provide clear guidance to the regulated community on its regulatory requirements and the people responsible for the submissions need to follow this guidance. This should lead to better quality submissions and decisions on these submissions will be made faster.

Improvement of submission quality could be achieved through:

- The development of a DEM administrative completeness checklist that could be used as a guide by an applicant for site remediation submissions. (This checklist has been finalized.) In addition DEM should develop, publish and distribute guidance material and policy directives about the regulations using the DEM homepage and traditional outreach mechanisms.

- DEM is working on revising outreach materials and include updating the general Brownfields material and developing new material such as, "How to Address Environmental Contamination", and "How to Hire a Consultant". It is anticipated a new state Brownfields website will be up and running by September 1, 2001.

- Standardization of Submission Format - Reviews of submissions could be performed more expeditiously if all aspects of the regulations were covered in the submission. Reviews would flow better if a standard format were used. To ensure application completeness and standardize review, submissions should address all requirements of section 7 of the regulations (Site Investigation). Submissions should state if a particular specific rule is not applicable to a site. Consistency of DEM reviews could be helped by the use of the administrative / review technical checklist.

- DEM is proposing to implement a policy that will speed up review of Marginal Risk Sites. This proposed policy would detail the specific requirements that must be included in a submission. If all elements are included in the submission, DEM will commit to making a decision in forty-two calendar days (excluding the settlement agreement, if one is needed).

- Submittals need to better address ecological risk pathways (i.e., sediments, surface water, etc.). Ecological risks are often poorly presented in submittals. For sites that are not in close proximity to water bodies, DEM needs to know that the consultant considered ecological pathways, and requires at least a statement saying "no ecological risk" in the absence of a lengthy ecological risk section. DEM noted they would give consideration to the MA DEP GW-3 MCP procedure for evaluating ecological risks and risks to surface water bodies.

- Submissions need to address section 7.04 of the regulations, i.e., development of three proposed remedial alternatives. Submissions are often weak in this section and are often sent back for more information.

  The above-mentioned strategies will be useful in generating a high-quality submission. The group also thought that some training on DEM's regulations could be useful. The Rhode Island Society of Environmental Professionals would like to work with DEM to develop training in this area.

Streamlining Opportunities

The Task Force identified the need to make the existing process more flexible and to streamline the process. There was much discussion on the need to develop an "urban fill" policy. Sometimes these sites do not pose a significant public health or environmental risk and site remediation remedies are usually the same. This discussion resulted in the development of

a “simple site” strawman and this initial proposal was refined into the “Marginal Risk Site” Policy (Appendix H) that was agreed upon by the full task force.

- This policy was designed to further the Department of Environmental Management’s goals of protecting environmental quality and public health through quicker clean-ups, while also promoting efficiency and accountability. Implementation of this policy will streamline the way DEM reviews projects that do not pose significant environmental or human health risks.

  DEM is establishing review time guidelines for “marginal risk sites”. The proposed policy applies to sites that are located either in a GB and GA/GAA groundwater aquifer. It encourages the removal of waste material and sets information requirements for the Site Investigation Report and presumptive remedies that could be used at the site. Applications that adequately address these requirements will be reviewed by DEM within 42 days. However, this guideline for DEM review factors in a public notice requirement. If there is substantial public comment on the proposal, DEM may not be able to meet this review time guideline. It should also be noted that the review timelines of this policy does not include the settlement agreement process (if one is needed for the site). Use of the model settlement agreement should, however, speed up the review time of this document.

  DEM staff often spends considerable time and effort in reviewing submissions that are incomplete and do not provide information that allows DEM to make a decision. These review guidelines are predicated on DEM receiving complete submissions that are of sufficient quality to review. If these submissions do not address all the elements of the policy, DEM will reject the submission as a “marginal risk site” and will evaluate it in the normal process where there are no firm time review guidelines or presumptive remedies. Implementation of this policy will reduce the review time**,** improve the quality of applications, and clarify the requirements for “marginal risk sites”.

- The group also evaluated the development of a public / private consortium or a limited Licensed Environmental Professional program that would assist in the remediation of marginal risk sites. This organization would be responsible for developing a certification program that includes an independent audit function. After discussion, both ideas were rejected because the Marginal Risk Site policy set a forty-two calendar day limit for DEM to process and make decisions on submissions. This relatively short time period, if carried out, meets the needs of the regulated community and the group felt it was not necessary to develop a private / public consortium or a Licensed Environmental Professional program to address this issue.

- The group also reviewed the site characterization and testing protocols to determine if the requirements are appropriate. This issue was discussed and there was no consensus on the need to revise the existing regulatory framework.

Environmental Equity

- The group was tasked with ensuring the Site Remediation Regulations appropriately address the issue of environmental equity issues. At the present time the DEM policy and implementation plan on this subject was not sufficiently developed to review by this group. It was requested that DEM should convene a group within six months, to review the existing policies and procedures relating to community notification and make recommendations for

any necessary changes. There was consensus that it was an important issue and needed to be addressed. Brownfields projects are often located in urban areas and there is a need to work and communicate with community groups about site specific issues. These projects can often provide job opportunities and other benefits to the host community. DEM's Environmental Equity program should reflect the beneficial nature of Brownfields projects and should not be an impediment for the constructive reuse of these sites. In any event, DEM will work to ensure the process will be protective of human health and protective of further environmental degradation.

Task Force members noted that a defining criterion that helps focus the environmental equity issues would be helpful. For example: How close does a group or building have to be for receptor status and environmental equity consideration?

Fee Structure

Concerns were raised that DEM does not have sufficient resources to adequately fund and staff the site remediation program. A number of funding options were explored in an attempt to increase the capacity of the program and include the following:

- The working group discussed requiring fees collected in the site remediation be placed in a restricted receipt account, and to allow the program to hire outside technical support as needed. In addition, fees should reflect the actual review time required for complex proposed remedies (i.e.: risk assessment reviews). The funding collected could then be used to support the programs technical needs, such as reviewing complex remediation alternatives. DEM staff indicated that restricted receipt accounts are not the current practice in state government and would be difficult to implement. It was noted that all funds collected by a program are returned to the state and future activities need to be budgeted on a yearly basis. There is no guarantee that the funding collected would be appropriated for these purposes in subsequent years.

- To encourage more use of innovative technology, and more permanent clean ups, the State should consider a fee structure for the use of Environmental Land Use Restrictions (ELUR) to discourage their overuse. RIDEM explained their consideration that fees for ELUR's would help minimize their use and increase actual remediation activities. It was noted, however, that the difference in cost for an ELUR fee and potential remediation scenarios would likely be so significant and that it would not end up being a deterrent at all**.** One issue discussed was having yearly fees for ELUR's. This might push more removal proposals versus caps.

- Suggestions were made that incentives as opposed to fees may be more helpful (i.e. tax relief or other mechanisms). RIDEM noted there already existed a federal tax relief for certain remediation actions. There were no specific incentives proposed.

Staffing

Concerns were raised by some stakeholders that DEM does not have sufficient experienced staff to properly staff the program. The lack of sufficient staff does not allow submissions to be evaluated in a timely manner. The program staff is considered competent in most aspects of the review with the exception of complex risk assessments where it is felt that the program is not equipped to expeditiously review these documents. The program therefore uses personnel from other parts of the agency. As a result, review times of these complex submissions may not be timely. Another concern raised was that there is not a comfort level

between staff and the regulated community and trust needs to be developed between these two groups. It was also felt that there are many new employees in the program and as a result of their experience level, are being too conservative in their reviews.

In order to address some of these issues, DEM will encourage staff to meet with the regulated community at the early stages of development of a project. This early meeting should allow staff and the project developer to get a feel for the project and should increase the comfort level of both parties. In addition, DEM is considering re-instituting regularly scheduled meetings with the stakeholders to discuss issues of interest.

Familiarity with the project will also allow the staff to review the project with more information and should reduce the need to be overly conservative with their reviews. DEM can encourage these meetings with developers. However, it was mentioned that responsible parties, especially those involved with property transfers are not always eager to meet with DEM before they fully understand their site issues. It is DEM's position that they may be able to assist in limiting the scope of the investigation if they have earlier input.

The group was concerned that DEM did not have adequate resources to review submissions in a timely manner. Furthermore, the staffing problem will be exacerbated by an increased effort to clean up more sites through the Brownfields program. Recommendations of this Task Force may also require additional staff time to be used for pre-application meetings, outreach activities and development of guidance materials. These efforts are needed, but may impact review times. It was felt that the application of the Marginal Risk Policy may be useful in reducing review times for the more complex projects, but the impacts of the implementation of this policy are unknown. There were some concerns expressed that DEM needed a mechanism to have outside consultants review Method 3 soil objectives.

C. Arsenic Working Group

DEM will modify its existing Arsenic Policy (Appendix I) as a result of discussions at the working group and task force levels and evaluation of the six-month pilot program. The meeting participants discussed alternatives for both residential and industrial cases. The discussion centered on:

(A) Keeping the existing policy for residential uses for properties.

(B) A revised policy or possible regulatory change to raise the level to 7 PPM for sites that will be used for industrial / commercial applications.

Concentrations of arsenic below 7 PPM

Consistent with other contaminants, DEM proposed to keep the existing requirement of being notified when levels are detected between the Residential Direct Exposure Criteria of 1.7 PPM and 7 PPM. The use of Best Management Practices (BMP) was also discussed for arsenic levels above the calculated risk based standards. The Department also discussed inclusion of additional presumptive remedies in any policy revisions, which would include:

a. Excavation;
b. The use of engineered controls such as a two foot soil or 4 inch asphalt cap;
c. Phytoremediation;
d. Soil Blending with adequate dust control measures; and
e. Other methods approved by the Department

For industrial/commercial sites (restricted to non-residential uses) if all concentrations of arsenic are below 7 PPM and there are no other jurisdictional releases on the site, the Department would issue a Non-Jurisdictional Letter. For these sites, a performing party that does not wish to demonstrate that the concentrations between 1.7 PPM and 7 PPM are background may propose an ELUR limiting the reuse of the site to Industrial/Commercial activity as the remedial alternative.

Concentrations of arsenic above 7 PPM

Arsenic concentrations above 7 PPM will be assumed to be attributable to a release and will automatically require some level of response action as outlined in the Remediation Regulations. If the consultant believes these higher levels are still background; the Department will require a full site-specific background study for concentrations above 7 PPM. This study will be used to determine the site-specific remedial goal or to show the elevated levels are truly background levels.

Arsenic measured above the 7 PPM level (or a higher approved site-specific background concentration greater than 7PPM) will not be allowed to remain on-site unless there is an approved engineered control in place with an associated Environmental Land Use Restriction (ELUR) requiring maintenance of the remedy. If there are no groundwater standards exceeded, approved-engineered controls include:

1) Excavation;
2) Two foot clean soil cap;
3) 6 inches of clean soil and 4-inch asphalt cap;
4) One foot clean soil over a Geo fabric material meeting acceptable puncture strength;
5) Phytoremediation with confirmatory sampling;
6) Soil Blending with confirmatory sampling and dust control measures; and
7) Other methods approved by the Department.

DEM will amend its regulations indicating the Table 1 Direct Exposure Criteria for arsenic for Industrial / Commercial will be raised from 3.8 mg/kg to 7.0 mg/kg. In addition, the revised arsenic policy will be used after the regulation change is in place. The existing arsenic policy will remain in place until the regulation is changed.

V. FINAL RECOMMENDATIONS

As a result of the discussions of the Task Force and working groups, all concerns were discussed and evaluated. From these discussions the following recommendations were made to improve the review process and outreach efforts of the Site Remediation Program. Some of the recommendations have been accomplished, and others can be implemented by DEM. The Task Force in many instances has raised the issue of staffing. Implementation of the recommendations needs to consider existing staffing levels. DEM now needs to review and prioritize these recommendations for possible implementation. The Office of Waste Management should undertake an internal review of these recommendations and develop a work plan and a schedule for regulation change, policy development or administrative implementation by December 31, 2002. Attachment J can be used to indicate the status, priority and implementation schedule for these recommendations.

A. Regulatory Recommendations

1.) Review the DEM tanks regulations for streamlining opportunities.

A. At a minimum, update the Oil Pollution Control (OPC) Regulations. The OPC regulations addresses three main areas, i.e., aboveground storage tanks, leak and spill response actions and off loading and transport of oil. The CRMC and the Coast Guard primarily regulate jurisdiction of the latter item. Portions of the regulations are outdated and/or conflict with other programs, i.e., there were incorrect references; and that certain administrative issues needed updating (phone numbers, definitions).

B. There may also be some value in reviewing the regulations to develop a "tanks" regulation that combines the OPC, UST, LUST and the AST programs. There is also overlap of DEM's regulatory authority with the Underground Injection Control, Groundwater, and Hazardous/Solid Waste regulations. Effort should be taken to review these regulations to ensure program consistency.

C. DEM should at least develop guidance on appropriate clean up protocols for petroleum products that are consistent between programs.

D. There are differences in the regulatory framework in the LUST and the Site Remediation programs, centering on the fact that LUST addresses a specific tank "release" vs. the "discovery" of a release anywhere on-site. DEM should review the regulations and determine if some of these regulatory differences should be revised to streamline the existing regulatory framework. The following items were noted:

- Notification requirements are different
- The Oil Pollution Control Regulations focus on emergency response and clean-up, the Site Remediation regulations are more concerned with the long term solution to a spill and there may be different clean up standards mandated by the two programs,
- Site Remediation regulations require more contaminants to be sampled
- The Site remediation program is broader in scope, has more steps and may increase the cost of LUST clean-ups for little additional benefit.
- The LUST program relies more on field screening techniques versus Site Remediation requirements.

- There are not consistent soil clean-up standards between the LUST and Site Remediation Program.
- No Further Action letters in the Tank Program only addresses the release from the tank or a specific location on a site. The Letter of Compliance in the Site Remediation Program makes a statement about the whole site.

2.) OWM should amend its regulations indicating the Table 1 Direct Exposure Criteria for arsenic for Industrial / Commercial will be raised from 3.8 mg/kg to 7.0 mg/kg. The existing arsenic policy will remain in place until the regulation is changed and be replaced by the revised arsenic policy after the regulation change is promulgated.

3.) DEM should use the same language and terminology in all the regulations.

4.) Submittals need to better address ecological risk pathways (i.e.: sediments, surface water, etc.). Ecological risks are often poorly presented in submittals and DEM should give consideration to the guidance established in the Massachusetts regulations (MA DEP GW-3 MCP) for evaluating ecological risks and risks to surface water bodies.

5.) In order to encourage removal of contaminated material from sites, the regulations should require the imposition of yearly fees for sites that want to establish Environmental Land Use Restrictions.

6.) DEM should revise its regulations to require notifications of municipalities and watershed groups when the performing party publishes the notice concerning the Settlement Agreement.

B. Policy Recommendations

1.) OWM should adopt the Marginal Risk Policy that was approved by the Task Force.

Implementation of the Marginal Risk Site policy will streamline the way DEM reviews projects that do not pose significant environmental or human health risks. Resources that are currently used to review these “marginal risk sites” will be spent in reviewing and cleaning up projects that have a greater environmental impact.

DEM is establishing review time guidelines for “marginal risk sites”. The proposed policy applies to sites that are located in a GB groundwater aquifer. It encourages the removal of waste material and sets information requirements for the Site Investigation Report and presumptive remedies that should be used at the site. Applications that adequately address these requirements will be reviewed by DEM within 42 days.

Review guidelines are predicated on DEM receiving complete submissions that are of sufficient quality to review. If these submissions do not address all the elements of the policy, DEM will reject the submission as a “marginal risk site” and will evaluate it in the normal process where there are no firm time review guidelines or presumptive remedies.

2.) The Task Force spent a major part of a meeting reviewing the proposed model Settlement Agreement. Based on comments that were heard at this meeting, DEM needs to finalize and begin to use this document for sites that are covered by the Brownfields Program. Use

of the revised model agreement, without significant deviation, will speed up the legal review time needed for final DEM approval.

3.) In order to clarify the scope of Brownfields projects DEM should encourage pre-submission meetings with potential developers.

4.) The DEM Site Remediation Regulations should appropriately address the issue of Environmental Equity either by amendment of the regulations or by adopting the DEM policy when finalized.

5.) OWM should re-institute regularly scheduled meetings to discuss issues of interest in order to increase the trust levels of stakeholders in the Brownfields and Site Remediation community.

6.) DEM should develop a working relationship with the EDC, the environmental consulting and the distressed properties legal community to use EPA targeted funds to characterize and possibly remediate distressed properties.

C. Administrative Recommendations

1.) DEM should disseminate notes from the pre-application meetings within 10 in order to identify any miscommunications or misunderstandings concerning the project.

2.) DEM does not have sufficient personnel resources in the Brownfields Program and should increase staff size in this program area.

3.) OWM should assist GrowSmart RI with the development of a statewide inventory of Brownfields sites.

4.) OWM should expand the notification of abutters to the project site at the time of completion of the investigation and when the remedy is proposed, to municipal governments and watershed groups.

5.) Many DEM programs impact site remediation projects. The final approval letter is key for many projects and DEM should review its final letter to ensure includes concerns from all environmental programs.

6.) To ensure application completeness and standardize review, submissions should address all requirements of section 7 of the regulations (Site Investigation). Submissions should state if a particular specific rule is not applicable to a site.

7.) Consistency of DEM reviews could be helped by the use of the administrative / review technical checklist.

8.) DEM should develop fact sheets or guidance materials that detail DEM's regulatory framework for site remediation projects. All impacted DEM programs should be described in this document that should include reporting requirements and remediation standards.

9.) The Office of Waste Management, with respect to distressed properties, will designate a lead contact person who will be responsible for coordinating appropriate meetings with the receiver and all DEM offices that have regulatory oversight of the property.

10) DEM should develop another model settlement agreement to take into consideration the special requirements of a distressed property.

11) DEM should investigate the cost of environmental insurance to determine if this instrument could be used to provide certainty in the remediation of distressed properties.

D. Outreach Recommendations

1.) DEM should develop fact sheets or guidance materials that detail DEM's regulatory framework for site remediation projects. All impacted DEM programs should be described in this document that should include reporting requirements and remediation standards

2.) OWM should increase its coordination efforts of Brownfields projects that are undergoing review with local governments and watershed groups.

3.) DEM should increase its public outreach efforts that explain the goals of the program through an expanded web presence. OWM should also develop simple brochures covering such topics as "What are Brownfields?", "How to Hire a Consultant" and "How to Address Environmental Contamination".

4.) OWM should co-host a workshop on "Adequate Site Investigation Submissions". In this way the consultant community could learn by the mistakes of others. This workshop could discuss case studies about approaches that worked / did not work.

5.) OWM should work with the Rhode Island Society of Environmental Professionals (RISEP), and perhaps the RI Bar Association to develop a training course that could address some of the issues that were raised by the Task Force, such as application quality.

6.) DEM should develop, publish and distribute guidance material and policy directives about the regulations using the DEM homepage and traditional outreach mechanisms.

7.) In order to increase the number of distressed properties cleaned up; DEM should work with the distressed properties legal community. One way to accomplish this is to discuss this issue using the Rhode Island Bar Association's committee structure, i.e. the Environmental Law and Debtor/Creditor committees.

8.) DEM should convene a group within six months, to review the existing policies and procedures relating to community notification and make recommendations for any necessary changes.

E. Task Force Prioritization of Recommendations

One theme that was heard throughout the Task Force process was that the OWM did not have sufficient program resources. The implementation of the recommendations could therefore problematical since some of them would require additional resources to implement. At the last meeting of the full Task Force the group was asked to review the recommendations and rank them using a 1-3 ranking system where 1 was a low priority, 2 was a medium priority and 3 a high priority. Each person was requested to only rank two recommendations as high in each of the four categories, i.e., Regulatory, Policy, Administrative and Outreach. The ranking of the recommendations will enable the Office of Waste Management to develop a work plan that should stress the higher ranked items.

Eleven members of the Task Force participated in ranking the recommendations. The results of this ranking are found in Attachment J-1.

The recommendations ranked high in order of highest priority were:

- DEM need to finalize and begin to utilize the model Settlement Agreement for sites that are covered by the Brownfields Program.
- OWM should amend its regulations indicating the Table 1 Direct Exposure Criteria for arsenic for Industrial / Commercial will be raised from 3.8 mg/kg to 7.0 mg/kg.
- DEM need to finalize and begin to utilize the model Settlement Agreement for sites that are covered by the Brownfields Program.
- DEM should review the tanks regulations for streamlining opportunities.

Some of the recommendations ranked medium included:

- OWM should finalize an administrative completeness checklist that could be used as a guide by an applicant for site remediation.
- DEM should develop fact sheets or guidance materials that detail DEM's regulatory framework for site remediation projects. All impacted DEM programs should be described in this document that should include reporting requirements and remediation standards.
- To ensure application completeness and standardize review, submissions should address all requirements of section 7 of the regulations (Site Investigation). Submissions should state if a particular specific rule is not applicable to a site.
- Consistency of DEM reviews could be helped by the use of the administrative / review technical checklist.
- The Office of Waste Management will designate a lead contact person who will be responsible for coordinating appropriate meetings with the receiver and all DEM offices that have regulatory oversight of the distressed property.
- OWM should assist GrowSmart RI with the development of a statewide inventory of Brownfields sites.
- DEM should develop a working relationship with the EDC, the environmental consulting and distressed properties legal community to use EPA targeted funds to characterize and possibly remediate distressed properties.

Appendix A - Task Force Roster

Task Force Roster			
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Appendix B Task Force Issues of Concern

Task Force Issues of Concern	
Administrative Areas of Concern	
No.	**Issue**
	Staffing
1 A	There is insufficient staff to run the program.
2 A	Staff takes too long to review complex projects that are out of the ordinary.
3 A	DEM staff is not generally equipped to review complex risk assessments.
4 A	There is not a comfort level between staff and the regulated community and trust needs to be developed between these two groups.
5 A	There are many new employees in the program and as a result of their experience level, are being too conservative in their reviews.
6 A	Performance tracking is a good management tool, but there is concern that the goals may push DEM staff to issue deficiency letters to meet time goals, rather than working to make decisions on the submitted material.
	Application Quality / Training
1 A	In order to improve application quality, DEM should sponsor consultant-training courses, possibly using URI as a resource.
2 A	Stakeholders should support a training institute and push for training in this area.
3 A	DEM should conduct consultant training / workshops on DEM's expectations for site remediation submissions.
4 A	DEM should develop, publish and distribute guidance material and policy directives about the regulations using the DEM homepage and traditional outreach mechanisms.
5 A	DEM should develop an administrative completeness checklist that could be used as a guide by an applicant for site remediation submissions.
6 DEM	To ensure application completeness and standardize review, submissions need to address all requirements of section 7 (Site Investigation). If required, submissions should state if a particular specific rule is not applicable to a site.
7 DEM	Submissions should address section 7.04 (re: development of 3 proposed remedial alternatives) addressed specifically relative to cases involving proposed residential reuse of historic industrial properties.
8 DEM	Submittals need to better address ecological risk pathways (i.e.: sediments, surface water, etc.).
9 DEM	If a site investigation and remedial action work plan are submitted concurrently, the site investigation is complete.
10 DEM	Presumptive remedy options should be evaluated.

Arsenic	
No.	**Issue**
1 P	Review the epidemiological assumptions for setting the risk level for arsenic. The data from India should be reviewed.
2 P	Review the standard set for residential, commercial and industrial use.
3 P	Clarify / review the data on background arsenic levels.
4 P	Review the role of DEM and DOH and reporting requirements in instances where high arsenic background levels are not caused by releases.
5 P	Provide more guidance concerning how to determine background levels of arsenic.
6 P	Examine DEM's and DOH's respective roles in regulating public health concerns through the site remediation regulations.

Regulatory Issues	
No.	**Issue**
1 R	Regulations need to be updated and better coordinated, especially the Oil Pollution Control and UST regulations.
2 R	The Site Investigation Report and the Remediation Plan should be combined into one process.
3 R	Review and clarify the site characterization and testing protocols to determine if the requirements are appropriate.
4 R	Modify the regulations (if necessary) after the policy issues concerning arsenic have been resolved.
5 R	The Site Remediation Rules are cumbersome and should be made more flexible.
6 R	Environmental Equity – Review the Site Remediation Regulations to ensure those environmental equity issues are appropriately addressed.
7 P	Develop a policy / change regulations that encourages an expedited remediation process for "simpler sites"
8 P	Evaluate a limited LSP process for the "simpler sites. Look at the possibility of allowing third party certification of site conditions and an expedited review of Settlement Agreements and Remedial Action Plans.
9 P	Encourage the development of a public / private consortium that will help to get "simpler sites" remediated. Have this organization be responsible for developing a certification program that includes an independent audit function.
10 P	DEM should develop a model Settlement Agreement.
11 P	Site Remediation, LUST and UST regulations should have consistent remedial objectives.
12 DEM	To better fund and support the program, fees should better reflect the actual review time required for complex proposed remedies (i.e.: risk assessment reviews).
13 DEM	Options should be considered (including fees and funding sources) to allow the program to hire outside technical support as needed.
14 DEM	To encourage more use of innovative technology, and more permanent clean ups, the State should consider a fee structure for the use of ELUR's to discourage their overuse.

Brownfields Issues	
No.	**Issue**
1 A	Brownfields projects should be handled by a separate staff / process.
2 A	There should be better coordination of the Brownfields program between DEM and the local governments.
3 A	More work should be done to build an inventory of Brownfields sites throughout the state. The comprehensive plans could be used as a tool to build this inventory.
4 A	Is the DEM regulatory culture conducive to goals of the Brownfields program?
5 A	The process should be an efficient process; sites approved quickly, but environmental and public health concerns should not be compromised.
6 A	Review the Grow smart recommendations for possible implementation.
7 A	DEM should conduct a public outreach program that explains the goals of the program.
8 P	DEM should develop a model Settlement Agreement.
9 P	Develop a policy on urban fill that allows remediation to occur in an expedited manner. Policy should encourage site reuse and discourage urban sprawl.
10 P	Develop a policy / regulatory objective for the remediation of distressed properties.
11 P	Develop an alliance with impacted constituencies of distressed properties i.e. bankruptcy attorneys, trustees, banks, receivers, etc. that will encourage the remediation of these sites.
12 P	Increase the capacity of local governments to handle Brownfields issues.
13 P	Review the public notification process to determine the appropriate level of public involvement, i.e. public hearing vs. public notice.
14 R	Shift some of the work of the Brownfields program to local governments after local capacity has been enhanced.

Appendix C Brownfields Working Group Issues of Concern

Brownfields Working Group Issues	
No.	**Issue**
1 A	Brownfields projects should be handled by a separate staff / process.
2 A	There should be better coordination of the Brownfields program between DEM and the local governments.
3 A	More work should be done to build an inventory of Brownfields sites throughout the state. The comprehensive plans could be used as a tool to build this inventory.
4 A	Is the DEM regulatory culture conducive to goals of the Brownfields program?
5 A	The process should be an efficient process; sites approved quickly, but environmental and public health concerns should not be compromised.
6 A	Review the Grow smart recommendations for possible implementation.
7 A	DEM should conduct a public outreach program that explains the goals of the program.
8 P	DEM should develop a model Settlement Agreement.
9 P	Develop a policy on urban fill that allows remediation to occur in an expedited manner. Policy should encourage site reuse and discourage urban sprawl.
10 P	Develop a policy / regulatory objective for the remediation of distressed properties.
11 P	Develop an alliance with impacted constituencies of distressed properties i.e. bankruptcy attorneys, trustees, banks, receivers, etc. that will encourage the remediation of these sites.
12 P	Increase the capacity of local governments to handle Brownfields issues.
13 P	Review the public notification process to determine the appropriate level of public involvement, i.e. public hearing vs. public notice.
14 P	Develop a policy / change regulations that encourages an expedited remediation process for “simpler sites”
15 P	Evaluate a limited LSP process for the “simpler sites. Look at the possibility of allowing third party certification of site conditions and an expedited review of Settlement Agreements and Remedial Action Plans.
16 P	Encourage the development of a public / private consortium that will help to get “simpler sites” remediated. Have this organization be responsible for developing a certification program that includes an independent audit function.
17 R	Shift some of the work of the Brownfields program to local governments after local capacity has been enhanced.

Appendix D Regulatory and Administrative Working Group Issues of Concern

Regulatory and Administrative Working Group Charter Issues	
No.	**Issue**
1 R	Regulations need to be updated and better coordinated, especially the Oil Pollution Control and UST regulations.
2 R	The Site Investigation Report and the Remediation Plan should be combined into one process.
3 R	Review and clarify the site characterization and testing protocols to determine if the requirements are appropriate.
4 R	Modify the regulations (if necessary) after the policy issues concerning arsenic have been resolved.
5 R	The Site Remediation Rules are cumbersome and should be made more flexible.
6 R	Environmental Equity – Review the Site Remediation Regulations to ensure environmental equity issues are appropriately addressed.
7 P	Develop a policy / change regulations that encourages an expedited remediation process for "simpler sites"
8 P	Evaluate a limited LSP process for the "simpler sites. Look at the possibility of allowing third party certification of site conditions and an expedited review of Settlement Agreements and Remedial Action Plans.
9 P	Encourage the development of a public / private consortium that will help to get "simpler sites" remediated. Have this organization be responsible for developing a certification program that includes an independent audit function.
10 P	DEM should develop a model Settlement Agreement.
11 P	Site Remediation, LUST and UST regulations should have consistent remedial objectives.
13 DEM	To better fund and support the program, fees should better reflect the actual review time required for complex proposed remedies (i.e.: risk assessment reviews).
14 DEM	Options should be considered (including fees and funding sources) to allow the program to hire outside technical support as needed.
15 DEM	To encourage more use of innovative technology, and more permanent clean ups, the State should consider a fee structure for the use of ELUR's to discourage their overuse.
	Staffing issues
1 A	There is insufficient staff to run the program.
2 A	Staff takes too long to review complex projects that are out of the ordinary.
3 A	DEM staff is not generally equipped to review complex risk assessments.
4 A	There is not a comfort level between staff and the regulated community and trust needs to be developed between these two groups.
5 A	There are many new employees in the program and as a result of their experience level, are being too conservative in their reviews.
6 A	Performance tracking is a good management tool, but there is concern that the goals may push DEM staff to issue deficiency letters to meet time goals, rather than working to make decisions on the submitted material.

	Application Quality / Training
7 A	In order to improve application quality, DEM should sponsor consultant-training courses, possibly using URI as a resource.
8 A	Stakeholders should support a training institute and push for training in this area.
9 A	DEM should conduct consultant training / workshops on DEM's expectations for site remediation submissions.
10 A	DEM should develop, publish and distribute guidance material and policy directives about the regulations using the DEM homepage and traditional outreach mechanisms.
11 A	DEM should develop an administrative completeness checklist that could be used as a guide by an applicant for site remediation submissions.
12 DEM	To ensure application completeness and standardize review, submissions need to address all requirements of section 7 (Site Investigation). If required, submissions should state if a particular specific rule is not applicable to a site.
13 DEM	Submissions should address section 7.04 (re: development of 3 proposed remedial alternatives) addressed specifically relative to cases involving proposed residential reuse of historic industrial properties.
14 DEM	Submittals need to better address ecological risk pathways (i.e.: sediments, surface water, etc.).
15 DEM	If a site investigation and remedial action work plan are submitted concurrently, the site investigation is complete.
16 DEM	Presumptive remedy options should be evaluated.

Appendix E Arsenic Working Group Issues Of Concern

Arsenic Working Group Charter	
No.	**Issue**
1 P	Review the epidemiological assumptions for setting the risk level for arsenic. The data from India should be reviewed.
2 P	Review the standard set for residential, commercial and industrial use.
3 P	Clarify / review the data on background arsenic levels.
4 P	Review the role of DEM and DOH and reporting requirements in instances where high arsenic background levels are not caused by releases.
5 P	Provide more guidance concerning how to determine background levels of arsenic.
6 P	Examine DEM's and DOH's respective roles in regulating public health concerns through the site remediation regulations.

Appendix F Model Settlement Agreements

Appendix F-1 - Two Party Model Settlement Agreement

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF WASTE MANAGEMENT

IN RE: Property at **[Insert Plat, Lot, Block]**
[Insert Address]
[Insert Town or City], Rhode Island
Case No: **[Insert Case number]**

SETTLEMENT AGREEMENT AND COVENANT NOT TO SUE

1. INTRODUCTION

This Settlement Agreement and Covenant Not to Sue (the "Agreement") is made and entered into by and between the State of Rhode Island (the "State"), acting by and through the Rhode Island Department of Environmental Management (the "Department") and **[Insert Name of Person, Company, corporation, LLC or LLP]** (the "Settling Respondent"). The Department and the Settling Respondent are collectively referred to herein as the "Parties".

The State enters into this Agreement pursuant to the Industrial Property Remediation and Reuse Act, Rhode Island General Laws Chapter 23-19.14-1, et seq. (the "Act").

The Settling Respondent agrees that the Property is jurisdictional under the Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases ("Remediation Regulations"), as amended in 1996, and that the Department has jurisdiction over the Site. The Settling Respondent also agrees to undertake all actions required of the Settling Respondent by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to reservations and limitations contained herein, the potential liability of the Settling Respondent for the Existing Contamination at the Property, which would otherwise result from Settling Respondent becoming the owner of the property.

The Parties agree that the Settling Respondent's entry into this Agreement, and the actions undertaken by the Settling Respondent in accordance with the Agreement, do not constitute an admission of any liability by the Settling Respondent.

The resolution of this potential liability, in exchange for provision by the Settling Respondent to the State of a substantial benefit, is in the public interest. This Agreement shall be null and void should the Settling Respondent not acquire title to the Property.

2. DEFINITIONS

2.1 Unless otherwise expressly provided herein, terms used in this Agreement, which are defined in the Act or in regulations promulgated under the Act shall have the meaning assigned to them in the Act or in such regulations, including any amendments thereto.

1. "State" shall mean the State of Rhode Island, acting by and through the Rhode Island Department of Environmental Management.

2. "Department" shall mean the Rhode Island Department of Environmental Management.

3. "Existing Contamination" shall mean any hazardous substances, pollutants or contaminants known to be present or existing on or under the Site, based upon investigations and assessments provided to the Department as of the Effective Date of this Agreement.

4. "Parties" shall mean the Department and the Settling Respondent.

5. "Property" shall mean that portion of the Site that is described in Exhibit 1 of this Agreement.

6. "Site" shall mean the land, encompassing approximately _____ acres, located at **[address or description of location]** in **[name of city, county, and State]**, and depicted generally on the map attached as Exhibit 2. The Site shall include the Property, and all areas to which hazardous substances and/or pollutants or contaminants, have come to be located **[provide a more specific definition of the Site where possible; may also wish to include within Site description structures, USTs, etc]**.

3. STATEMENT OF FACTS

3.1. The "Settling Respondent" is **[Insert Name of Person, Company, corporation, LLC or LLP]**. The Settling Respondent warrants and represents, that it is a "bona fide prospective purchaser," as that term is defined in the Act and the Remediation Regulations, of the Property.

3.2. **[Insert date and specific site information relating to the Site's history: i.e., Notification of Release, Site Investigation work performed and any Department approvals for Variances, preferred Remedial Alternatives, Remedial Action Work Plans, Soil Management Plans and Institutional Controls (ELURs)]**.

3.3. The documents that have been submitted to the Department pertaining to the environmental conditions at the Property are as follows: **[Insert a list of the specific documents related to this property in the possession of the Department. Include the name of the document, the date of the document, and who prepared the document]**.

3.4. These documents indicate that **[Specifically state what contaminants are in exceedance of the Remediation Regulations, i.e. Residential Direct Exposure Criteria, Industrial / Commercial Direct Exposure Criteria, GA Leachability, GB Leachability, etc.]**.

3.5. The Settling Respondent represents, and for the purposes of this Agreement, the State relies on those representations, that Settling Respondent's involvement with the Property and the Site has been limited to the following: **[Provide facts of any involvement by Settling Respondent with the Site, for example performing an environmental audit, or if Settling Respondent has had no involvement with the Site so state.]**.

4. WORK TO BE PERFORMED

4.1 The Settling Respondent shall:

1. implement the **[choose Remedial Action Work Plan (the "RAWP") and/or Soil Management Plan (the "SMP")]**;
2. submit a closure report for Department review and approval;
3. **[If institutional controls are a part of the approved remedial actions for the Site]** record an Environmental Land Usage Restriction (the "ELUR"). After the installation of the engineered controls described in Section 4.2.3 herein, the Settling Respondent shall complete a survey of the portions of the Property that are to be subject to the ELUR. Within 30 days of the completion of the survey, the Settling Respondent shall submit to the Department an ELUR for approval by the Department. The ELUR shall be similar in form and content to the ELUR that is attached hereto as Attachment A.]
4. **[If necessary, as determined by the Department prior to the execution of the Settlement Agreement]** conduct an assessment of the damages to natural resources caused by the Existing Contamination and, if required by the Department, provide mitigation and/or compensation for those damages.

4.2. The Settling Respondent agrees that:

1. The use of the Site shall be consistent with the level of protection provided in the approved remedial plan;
2. The use of the ground water at the Site shall be consistent with the level of protection provided in the approved remedial plan;
3. **[If institutional controls are a part of the approved remedial actions for the Site]** The engineered controls [state specifically what the controls are that are to be implemented] described in the proposed **[choose RAWP or SMP]** (the "Site Plan"), a copy of which is attached hereto as Attachment B and, as described within Exhibit B, attached to the ELUR, will not be disturbed and will be properly maintained to prevent humans engaged in **[choose residential or commercial/industrial]** activity from being exposed to soils and/or waters at the Property containing hazardous substances in concentrations exceeding the applicable Department-approved **[choose residential or commercial/industrial]** direct exposure criteria or leachability criteria pursuant to the Remediation Regulations; and
4. **[If institutional controls are a part of the approved remedial actions for the Site]** The contaminated soil subject to the ELUR shall not be disturbed in any manner without the prior written consent of the Department, except as permitted in the **[choose RAWP or SMP]**, in the ELUR Emergency Provisions (Section D of the ELUR), or in accordance with Section 5 of this Agreement.

4.3. The Settling Respondent agrees to allow the Department reasonable access to the Property to monitor compliance with this Agreement.

4.4. The Settling Respondent agrees not to interfere with, disrupt, impact the structural integrity of or in any way alter any monitoring equipment required as part of this Agreement. The Settling Respondent agrees to notify the Department if it becomes aware of any actual or proposed activity at the Property which has impacted, or which has the potential to impact, the ongoing monitoring performed at the Property pursuant to this Agreement.

4.5 The Department will issue a final Letter of Compliance (the "LOC") upon:

1. **[In the event that an ELUR is required under this Agreement]** Receipt by the Department of a certified copy of the recorded ELUR;
2. Completion of the work described in Section 4 of this Agreement;
3. Department approval of a closure report; and
4. Department receipt of the completed Brownfields Economic Information Form (to be supplied by the Department).

4.6 **[In the event that an ELUR is required under this Agreement]** The Settling Respondent shall annually inspect and report to the Department any uses of the Property contrary to the ELUR.

5. FUTURE WORK/SITE DISTURBANCE

5.1 **[In the event that an ELUR is required under this Agreement]** Prior to any activities below the existing surface of the ground on the Property, other than that allowed under the Emergency Provisions of the ELUR (Section D of the ELUR), the Settling Respondent shall provide the State, in writing no later than thirty (30) days prior to the planned initiation of work, with:

1. A plan that depicts the proposed improvements and/or developments;
2. An acknowledgement that all soils disturbed by construction activities will be handled in accordance with the approved ELUR, in the event that an ELUR is required under this Agreement; and
3. The name and address of the facility or entity in receipt of any soils to be removed from the site.

The Department will review the plan, comment if necessary, and respond in writing to the Settling Respondent.

5.2. **[In the event that an ELUR is required under this Agreement]** After completion of any construction or emergency action on the Property, the Settling Respondent shall provide the Department with a written statement, certified by a qualified environmental professional, that the work was performed in accordance with the approved ELUR and that the conditions set forth in the approved ELUR have been satisfied.

6. ACCESS/NOTICE TO SUCCESSORS IN INTEREST

6.1. The Settling Respondent agrees to provide to the Department, its authorized officers, employees, representatives, and all other persons performing response actions under Department oversight, an irrevocable right of access at all reasonable times to the Property and to any other property to which access is required for the implementation of response actions at the Site, to the extent access to such other property is controlled by the Settling Respondent, for the purposes of performing and overseeing response actions at the Site. The Settling Respondent agrees to provide reasonable notice to the Department of the timing of response actions to be undertaken at the Property. Notwithstanding any provision of this Agreement, the Department retains all of its authorities and rights, including enforcement authorities related thereto, under all applicable statutes and regulations, including any amendments thereto.

6.2. The Settling Respondent shall ensure that assignees, successors in interest, lessees, and sublessees, of the Property shall provide the same access and cooperation as long as they control the property. The Settling Respondent shall provide a copy of this Agreement to any current lessee or sublessee on the Property as of the Effective Date of this Agreement. Any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property shall be consistent with this Agreement.

6.3. **[If institutional controls are a part of the approved remedial actions for the Site]** The Settling Respondent shall record a copy of the ELUR in the Land Evidence Records of the municipality or municipalities in which the Property is located within thirty (30) days of the Department approval of the ELUR. A certified copy of the ELUR shall be submitted to the Department by the Settling Respondent within fourteen (14) days of recording. Each deed, lease, or other instrument conveying an interest in the Property subsequent to the Effective Date of this Agreement shall contain a notice stating that the Property is subject to this Agreement and to the ELUR. A copy of these documents shall be sent to the persons listed in Section 15 (Notices and Submissions).

6.4. In the event of an assignment or transfer of the Property or an assignment or transfer of an interest in the Property, the assignor or transferor shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Agreement except as the Department and the assignor or transferor agree otherwise and modify this Agreement, in writing, accordingly. Moreover, prior to or contemporaneous with any assignment or transfer of the Property, the assignee or transferee must consent in writing to be bound by the terms of this Agreement in order for the Covenant Not to Sue in Section 9 to be available to that party. The Covenant Not To Sue in Section 9 shall not be effective with respect to any assignees or transferees who fail to provide such written consent to the Department.

7. DUE CARE/COOPERATION

7.1. The Settling Respondent shall exercise due care at the Site with respect to the Existing Contamination and shall comply with all applicable local, State, and Federal laws and regulations. The Settling Respondent recognizes that the implementation of response actions at the Site may interfere with the Settling Respondent's use of the Property, and may require closure of its operations or a part thereof. The Settling Respondent agrees to cooperate fully with the Department in the implementation of response actions at the Site and further agrees not to interfere with such response actions. The Department agrees, consistent with its responsibilities

under applicable law, to use reasonable efforts to minimize any interference with the Settling Respondent's operations by such entry and response.

7.2 In the event the Settling Respondent becomes aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Site, Settling Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Chapter 23-19.1 of the Rhode Island General Laws, and all other applicable laws, immediately notify the Department of such release or threatened release.

8. CERTIFICATION

8.1. By entering into this agreement, the Settling Respondent certifies that, to the best of its knowledge and belief, it has fully and accurately disclosed to the Department all information known to it and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site and to its qualification for this Agreement. The Settling Respondent also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site. If the Department determines that information provided by Settling Respondent is not accurate and complete, the Agreement, within the sole discretion of the Department, shall be null and void and the Department reserves all rights it may have.

9. STATE OF RHODE ISLAND'S COVENANT NOT TO SUE

9.1. Subject to the Reservation of Rights in Section 10 of this Agreement and upon the Department's issuance of the LOC, the State of Rhode Island and the Department covenant not to sue or take any other civil or administrative action against Settling Respondent for any and all civil liability or injunctive relief or reimbursement of response costs with respect to Existing Contamination.

10. RESERVATION OF RIGHTS

10.1. The State of Rhode Island and the Department reserve and the Agreement is without prejudice to all rights against Settling Respondent with respect to all other matters, including but not limited to, the following:

1. Claims based on a failure by Settling Respondent to meet a requirement of this Agreement;

2. Any liability resulting from past or future releases of hazardous substances, pollutants or contaminants, at or from the Site caused or contributed to by Settling Respondent, its successors, assignees, lessees or sublessees;

3. Any liability resulting from exacerbation by Settling Respondent, its successors, assignees, lessees or sublessees, of Existing Contamination;

4. Any liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants, at the Site after the effective date of this Agreement, not within the definition of Existing Contamination;

5. Criminal liability; and

6. Liability for violations of local, State or Federal law or regulations.

10.2. With respect to any claim or cause of action asserted against the Settling Respondent by the Department, the Settling Respondent shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

10.3 Nothing in this Agreement shall change the status or fundamental liability of any entity as a "Responsible Party" as that term is defined in the Remediation Regulations with respect to the Existing Contamination and any and all contamination attributable to the Existing Contamination.

10.4. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State may have against any person, firm, corporation or other entity not a party to this Agreement.

10.5. Nothing in this Agreement is intended to limit the right of the Department to undertake future response actions at the Site or to seek to compel parties other than the Settling Respondent to perform or pay for response actions at the Site. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by the Department in exercising its authority under law. Settling Respondent acknowledges that it is purchasing property on which response actions may be required.

11. SETTLING RESPONDENT'S COVENANT NOT TO SUE

11.1. In consideration of the State's Covenant Not To Sue in Section 9 of this Agreement, the Settling Respondent hereby covenants not to sue and not to assert any claims or causes of action against the State, its authorized officers, employees, or representatives with respect to the Site and this Agreement, including but not limited to, any claims arising out of response activities at the Site, including claims based on the Department's oversight of such activities or approval of plans for such activities.

12. PARTIES BOUND/TRANSFER OF COVENANT

12.1. This Agreement shall apply to and be binding upon the State and the Settling Respondent and their respective officers, directors, employees, agents and assignees. The signatories for each Party to this Agreement represent that they are fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party.

12.2. Notwithstanding any other provisions of this Agreement, all of the rights, benefits and obligations conferred upon Settling Respondent under this Agreement, including any applicable ELUR, may be assigned or transferred in their entirety to any person without the prior written consent of the Department. In the event of such a transfer or assignment, however, the written consent from the transferee or assignee required in paragraph 6.4 of this Agreement shall be

provided to the Department for the Covenant Not to Sue to be effective with respect to the transferee or assignee.

12.3. All of the rights, benefits and obligations conferred upon Settling Respondent under this Agreement, including any applicable ELUR, may be assigned or transferred in part to any person only with the prior written agreement of the Department, the Settling Respondent and the transferee/assignee. In the event of such transfer or assignment, however, the written consent from the transferee or assignee required in Paragraph 6.4 of this Agreement shall be provided to the Department for the covenant not to sue to be effective with respect to the transferee or assignee.

12.4. In no case may a Responsible Party, as that term is defined in the Remediation Regulations, become a lessee, sublessee, assignee or transferee or otherwise benefit from the State's Covenant Not to Sue.

13. DOCUMENT RETENTION

13.1. The Settling Respondent agrees to retain and make available to the Department all business and operating records, contracts, site studies and investigations, and documents relating to operations and activities at the Property related to the remedial action, including any applicable ELUR or required monitoring, for at least ten (10) years after the LOC is issued by the Department, unless otherwise agreed to in writing by the Parties. At the end of ten years, the Settling Respondent shall notify the Department of the location of such documents and shall provide the Department with an opportunity to copy any documents at the expense of the Department.

14. PAYMENT OF COSTS

14.1. If the Settling Respondent fails to comply with any of the terms of this Agreement, the Settling Respondent shall be liable for all litigation expenses (including reasonable attorney's fees) and other enforcement costs incurred by the Department to enforce this Agreement or otherwise obtain compliance.

15. NOTICES AND SUBMISSIONS

15.1 All notices and submissions required pursuant to the Agreement shall be forwarded by the Settling Respondent or the Performing Party to:

RIDEM Office of Waste Management
c/o**[insert Project Manager's name and title]**
235 Promenade Street
Providence, RI 02908

16. EFFECTIVE DATE

16.1. The effective date of this Agreement shall be the date upon which the Department has fully executed the Agreement after review of and response to any public comments received.

17. CONTRIBUTION PROTECTION

17.1. Pursuant to Rhode Island General Laws Section 23-19.14-12, the Parties hereby agree that the Settling Respondent has resolved its liability to the State and shall not be liable for claims for contribution regarding the response actions taken or to be taken and response costs incurred or to be incurred by the State or any other person with respect to the Existing Contamination at the Site.

17.2. The Settling Respondent agrees that, with respect to any suit or claim for contribution brought by the Settling Respondent for matters related to this Agreement, the Settling Respondent shall notify the Department in writing no later than sixty (60) days prior to the initiation of such suit or claim.

17.3. The Settling Respondent also agrees that, with respect to any suit or claim for contribution brought against the Settling Respondent for matters related to this Agreement, the Settling Respondent shall notify in writing the Department within ten (10) days of service of the complaint on the Settling Respondent.

18. PUBLIC COMMENT

18.1. This Agreement shall be subject to a fourteen (14) day public comment period, after which the Department may modify or withdraw its consent to this Agreement if comments received, disclose facts or considerations, which indicate that this Agreement is inappropriate, improper or inadequate.

18.2 Copies of this Agreement shall be sent to the chief executive officer of the city or town and president of the city or town council no later than the initiation of the public notice required under Section 18.1.

Executed as a sealed instrument as of the latest date set forth below.

State of Rhode Island
Department of Environmental Management

By:

_____

Leo Hellested, P.E. Chief Date
Office of Waste Management

It is so agreed:

[insert name of Settling Respondent]

By:

_____

Date

Appendix F-2 – Three Party Model Settlement Agreement

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF WASTE MANAGEMENT

IN RE: Property at **[Insert Plat, Lot, Block]**
[Insert Address]
[Insert Town or City], Rhode Island
Case No: **[Insert Case number]**

SETTLEMENT AGREEMENT AND COVENANT NOT TO SUE

1. INTRODUCTION

This Settlement Agreement and Covenant Not to Sue (the "Agreement") is made and entered into by and between the State of Rhode Island (the "State"), acting by and through the Rhode Island Department of Environmental Management (the "Department"), **[Insert Name of company, corporation, LLC or LLP]** (the "Performing Party") and **[Insert Name of Person, Company, corporation, LLC or LLP]** (the "Settling Respondent"). The Department, the Performing Party and the Settling Respondent are collectively referred to herein as the "Parties".

The State enters into this Agreement pursuant to the Industrial Property Remediation and Reuse Act, Rhode Island General Laws Chapter 23-19.14-1, et seq. (the "Act").

The Performing Party and the Settling Respondent agree that the Property is jurisdictional under the Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases ("Remediation Regulations"), as amended in 1996, and that the Department has jurisdiction over the Site. The Performing Party and the Settling Respondent also agree to undertake all actions required of each of them by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to reservations and limitations contained herein, the potential liability of the Settling Respondent for the Existing Contamination at the Property, which would otherwise result from Settling Respondent becoming the owner of the property.

The Parties agree that the Settling Respondent's entry into this Agreement, and the actions undertaken by the Settling Respondent in accordance with the Agreement, do not constitute an admission of any liability by the Settling Respondent.

The resolution of this potential liability, in exchange for provision by the Settling Respondent to the State of a substantial benefit, is in the public interest. This Agreement shall be null and void should the Settling Respondent not acquire title to the Property.

2. DEFINITIONS

2.1 Unless otherwise expressly provided herein, terms used in this Agreement, which are defined in the Act or in regulations promulgated under the Act shall have the meaning assigned to them in the Act or in such regulations, including any amendments thereto.

1. "State" shall mean the State of Rhode Island, acting by and through the Rhode Island Department of Environmental Management.

2. "Department" shall mean the Rhode Island Department of Environmental Management.

3. "Existing Contamination" shall mean any hazardous substances, pollutants or contaminants known to be present or existing on or under the Site, based upon investigations and assessments provided to the Department as of the Effective Date of this Agreement.

4. "Parties" shall mean the Department, the Performing Party and the Settling Respondent.

5. "Property" shall mean that portion of the Site that is described in Exhibit 1 of this Agreement.

6. "Site" shall mean the land, encompassing approximately _____ acres, located at **[address or description of location]** in **[name of city, county, and State]**, and depicted generally on the map attached as Exhibit 2. The Site shall include the Property, and all areas to which hazardous substances and/or pollutants or contaminants, have come to be located **[provide a more specific definition of the Site where possible; may also wish to include within Site description structures, USTs, etc]**.

3. STATEMENT OF FACTS

3.1. The "Performing Party" is **[Insert Name of Person, Company, corporation, LLC or LLP]**, who is the owner of the Property and intends to sell the Property to the Settling Respondent.

3.2. The "Settling Respondent" is **[Insert Name of Person, Company, corporation, LLC or LLP]**. The Settling Respondent warrants and represents, that it is a "bona fide prospective purchaser," as that term is defined in the Act and the Remediation Regulations, of the Property.

3.3. **[Insert date and specific site information relating to the Site's history: i.e., Notification of Release, Site Investigation work performed and any Department approvals for Variances, preferred Remedial Alternatives, Remedial Action Work Plans, Soil Management Plans and Institutional Controls (ELURs)]**.

3.4. The documents that have been submitted to the Department pertaining to the environmental conditions at the Property are as follows: **[Insert a list of the specific documents related to this property in the possession of the Department. Include the name of the document, the date of the document, and who prepared the document]**.

3.5. These documents indicate that **[Specifically state what contaminants are in exceedance of the Remediation Regulations, i.e. Residential Direct Exposure Criteria, Industrial / Commercial Direct Exposure Criteria, GA Leachability, GB Leachability, etc.]**.

3.6. The Settling Respondent represents, and for the purposes of this Agreement, the State relies on those representations, that Settling Respondent's involvement with the Property and the Site has been limited to the following: **[Provide facts of any involvement by Settling Respondent with the Site, for example performing an environmental audit, or if Settling Respondent has had no involvement with the Site so state.]**.

4. WORK TO BE PERFORMED

4.2 The Performing Party shall:

1. Implement the **[choose Remedial Action Work Plan (the "RAWP") and/or Soil Management Plan (the "SMP")]**;
2. Submit a closure report for Department review and approval;
3. **[If institutional controls are a part of the approved remedial actions for the Site]** shall record an Environmental Land Usage Restriction (the "ELUR"). After the installation of the engineered controls described in Section 4.2.3 herein, the Performing Party shall complete a survey of the portions of the Property that are to be subject to the ELUR. Within 30 days of the completion of the survey, the Performing Party shall submit to the Department an ELUR for approval by the Department. The ELUR shall be similar in form and content to the ELUR that is attached hereto as Attachment A.
4. **[If necessary, as determined by the Department prior to the execution of the Settlement Agreement]** Conduct an assessment of the damages to natural resources caused by the Existing Contamination and, if required by the Department, provide mitigation and/or compensation for those damages.

4.2. The Settling Respondent agrees that:

1. The use of the Site shall be consistent with the level of protection provided in the approved remedial plan;
2. The use of the ground water at the Site shall be consistent with the level of protection provided in the approved remedial plan;
3. **[If institutional controls are a part of the approved remedial actions for the Site]** The engineered controls [state specifically what the controls are that are to be implemented] described in the proposed **[choose RAWP or SMP]** (the "Site Plan"), a copy of which is attached hereto as Attachment B and, as described within Exhibit B, attached to the ELUR, will not be disturbed and will be properly maintained to prevent humans engaged in **[choose residential or commercial/industrial]** activity from being exposed to soils and/or waters at the Property containing hazardous substances in concentrations exceeding the applicable Department-approved **[choose residential or commercial/industrial]** direct exposure criteria or leachability criteria pursuant to the Remediation Regulations; and

4. **[If institutional controls are a part of the approved remedial actions for the Site]** The contaminated soil subject to the ELUR shall not be disturbed in any manner without the prior written consent of the Department, except as permitted in the **[choose RAWP or SMP]**, in the ELUR Emergency Provisions (Section D of the ELUR), or in accordance with Section 5 of this Agreement.

4.3. The Performing Party and the Settling Respondent agree to allow the Department reasonable access to the Property to monitor compliance with this Agreement. Settling Respondent agrees to allow the Performing Party reasonable access to the Property to perform the work described in this Agreement.

4.4. The Settling Respondent and the Performing Party agree not to interfere with, disrupt, impact the structural integrity of or in any way alter any monitoring equipment required as part of this Agreement. The Settling Respondent and the Performing Party agree to notify the Department if either party becomes aware of any actual or proposed activity at the Property which has impacted, or which has the potential to impact, the ongoing monitoring performed by the Performing Party at the Property pursuant to this Agreement.

4.7 The Department will issue a final Letter of Compliance (the "LOC") upon:

1. **[In the event that an ELUR is required under this Agreement]** Receipt by the Department of a certified copy of the recorded ELUR;
2. Completion of the work described in Section 4 of this Agreement;
3. Department approval of a closure report; and
4. Department receipt of the completed Brownfield's Economic Information Form (to be supplied by the Department).

4.8 **[In the event that an ELUR is required under this Agreement]** The Settling Respondent shall annually inspect and report to the Department any uses of the Property contrary to the ELUR.

5. FUTURE WORK/SITE DISTURBANCE

5.2 **[In the event that an ELUR is required under this Agreement]** Prior to any activities below the existing surface of the ground on the Property, other than that allowed under the Emergency Provisions of the ELUR (Section D of the ELUR), the Settling Respondent shall provide the State, in writing no later than thirty (30) days prior to the planned initiation of work, with:

1. A plan that depicts the proposed improvements and/or developments;
2. An acknowledgement that all soils disturbed by construction activities will be handled in accordance with the approved ELUR, in the event that an ELUR is required under this Agreement; and
3. The name and address of the facility or entity in receipt of any soils to be removed from the site.

The Department will review the plan, comment if necessary, and respond in writing to the Settling Respondent.

5.2. **[In the event that an ELUR is required under this Agreement]** After completion of any construction or emergency action on the Property, the Settling Respondent shall provide the Department with a written statement, certified by a qualified environmental professional, that the work was performed in accordance with the approved ELUR and that the conditions set forth in the approved ELUR have been satisfied.

6. ACCESS/NOTICE TO SUCCESSORS IN INTEREST

6.1. The Performing Party and the Settling Respondent agree to provide to the Department, its authorized officers, employees, representatives, and all other persons performing response actions under Department oversight, an irrevocable right of access at all reasonable times to the Property and to any other property to which access is required for the implementation of response actions at the Site, to the extent access to such other property is controlled by the Settling Respondent, for the purposes of performing and overseeing response actions at the Site. The Performing Party agrees to provide reasonable notice to the Settling Respondent and the Department of the timing of response actions to be undertaken at the Property. Notwithstanding any provision of this Agreement, the Department retains all of its authorities and rights, including enforcement authorities related thereto, under all applicable statutes and regulations, including any amendments thereto.

6.2. The Settling Respondent shall ensure that assignees, successors in interest, lessees, and sublessees, of the Property shall provide the same access and cooperation as long as they control the property. The Settling Respondent shall provide a copy of this Agreement to any current lessee or sublessee on the Property as of the Effective Date of this Agreement. Any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property shall be consistent with this Agreement.

6.3. **[If institutional controls are a part of the approved remedial actions for the Site]** The Performing Party shall record a copy of the ELUR in the Land Evidence Records of the municipality or municipalities in which the Property is located within thirty (30) days of the Department approval of the ELUR. A certified copy of the ELUR shall be submitted to the Department by the Performing Party within fourteen (14) days of recording. Each deed, lease, or other instrument conveying an interest in the Property subsequent to the Effective Date of this Agreement shall contain a notice stating that the Property is subject to this Agreement and to the ELUR. A copy of these documents shall be sent to the persons listed in Section 15 (Notices and Submissions).

6.4. In the event of an assignment or transfer of the Property or an assignment or transfer of an interest in the Property, the assignor or transferor shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Agreement except as the Department and the assignor or transferor agree otherwise and modify this Agreement, in writing, accordingly. Moreover, prior to or contemporaneous with any assignment or transfer of the Property, the assignee or transferee must consent in writing to be bound by the terms of this Agreement in order for the Covenant Not to Sue in Section 9 to be available to that party. The Covenant Not To Sue in Section 9 shall not be effective with respect to any assignees or transferees who fail to provide such written consent to the Department.

7. DUE CARE/COOPERATION

7.1. The Settling Respondent and the Performing Party shall exercise due care at the Site with respect to the Existing Contamination and shall comply with all applicable local, State, and Federal laws and regulations. The Settling Respondent recognizes that the implementation of response actions at the Site may interfere with the Settling Respondent's use of the Property, and may require closure of its operations or a part thereof. The Settling Respondent agrees to cooperate fully with the Department in the implementation of response actions at the Site and further agrees not to interfere with such response actions. The Department agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with the Settling Respondent's operations by such entry and response.

7.2 In the event the Settling Respondent becomes aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Site, Settling Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Chapter 23-19.1 of the Rhode Island General Laws, and all other applicable laws, immediately notify the Department of such release or threatened release.

7. 3. In the event that the Performing Party becomes aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants, or contaminants at or from the Site, the Performing Party shall immediately take all appropriate actions to prevent, abate, and minimize such release or threat of release in compliance with all requirements in the Remediation Regulations, and shall, in addition to complying with any applicable notification requirements under Chapter 23-19.1 of the Rhode Island General Laws, and all other applicable laws, immediately notify the Department of such release or threatened release.

8. CERTIFICATION

8.1. By entering into this agreement, the Settling Respondent and the Performing Party each independently certifies that, to the best of its knowledge and belief, it has fully and accurately disclosed to the Department all information known to each of them and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site and to its qualification for this Agreement. The Settling Respondent also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site. If the Department determines that information provided by Settling Respondent is not accurate and complete, the Agreement, within the sole discretion of the Department, shall be null and void and the Department reserves all rights it may have. If the Department determines that information provided by Performing Party is not accurate and complete, the Agreement and all approvals granted by the Department to the Performing Party, within the sole discretion of the Department, shall be null and void and the Department reserves all rights it may have.

9. STATE OF RHODE ISLAND'S COVENANT NOT TO SUE

9.1. Subject to the Reservation of Rights in Section 10 of this Agreement and upon the Department's issuance of the LOC, the State of Rhode Island and the Department covenant not to sue or take any other civil or administrative action against Settling Respondent for any and all civil liability or injunctive relief or reimbursement of response costs with respect to Existing Contamination.

10. RESERVATION OF RIGHTS

10.1. The State of Rhode Island and the Department reserve and the Agreement is without prejudice to all rights against Settling Respondent with respect to all other matters, including but not limited to, the following:

1. Claims based on a failure by Settling Respondent to meet a requirement of this Agreement;

2. Any liability resulting from past or future releases of hazardous substances, pollutants or contaminants, at or from the Site caused or contributed to by Settling Respondent, its successors, assignees, lessees or sublessees;

3. Any liability resulting from exacerbation by Settling Respondent, its successors, assignees, lessees or sublessees, of Existing Contamination;

4. Any liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants, at the Site after the effective date of this Agreement, not within the definition of Existing Contamination;

5. Criminal liability; and

6. Liability for violations of local, State or Federal law or regulations.

10.2. With respect to any claim or cause of action asserted against the Settling Respondent by the Department, the Settling Respondent shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

10.3. The State of Rhode Island and the Department reserve and the Agreement is without prejudice to all rights against the Performing Party with respect to all other matters, including but not limited to, the following:

1. Claims based on a failure by Performing Party to meet a requirement of this Agreement;

2. Any liability resulting from past or future releases of hazardous substances, pollutants or contaminants, at or from the Site caused or contributed to by Performing Party, its successors, assignees, lessees or sublessees;

3. Any liability resulting from exacerbation by Performing Party, its successors, assignees, lessees or sublessees, of Existing Contamination;

4. Any liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants, at the Site after the effective date of this Agreement, not within the definition of Existing Contamination;

5. Criminal liability;

6. Liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment incurred by the State; and

7. Liability for violations of local, State or Federal law or regulations.

10.4. With respect to any claim or cause of action asserted against the Performing Party by the Department, the Performing Party shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

10.5 Nothing in this Agreement shall change the status or fundamental liability of the Performing Party as a "Responsible Party" as that term is defined in the Remediation Regulations with respect to the Existing Contamination and any and all contamination attributable to the Existing Contamination.

10.6. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State may have against any person, firm, corporation or other entity not a party to this Agreement.

10.7. Nothing in this Agreement is intended to limit the right of the Department to undertake future response actions at the Site or to seek to compel parties other than the Settling Respondent and the Performing Party to perform or pay for response actions at the Site. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by the Department in exercising its authority under law. Settling Respondent acknowledges that it is purchasing property on which response actions may be required.

11. SETTLING RESPONDENT'S COVENANT NOT TO SUE

11.1. In consideration of the State's Covenant Not To Sue in Section 9 of this Agreement, the Settling Respondent hereby covenants not to sue and not to assert any claims or causes of action against the State, its authorized officers, employees, or representatives with respect to the Site and this Agreement, including but not limited to, any claims arising out of response activities at the Site, including claims based on the Department's oversight of such activities or approval of plans for such activities.

12. PARTIES BOUND/TRANSFER OF COVENANT

12.1. This Agreement shall apply to and be binding upon the State, the Settling Respondent and the Performing Party and their respective officers, directors, employees, agents and assignees. The signatories for each Party to this Agreement represent that they are fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party.

12.2. Notwithstanding any other provisions of this Agreement, all of the rights, benefits and obligations conferred upon Settling Respondent under this Agreement, including any applicable ELUR, may be assigned or transferred in their entirety to any person without the prior written consent of the Department. In the event of such a transfer or assignment, however, the written consent from the transferee or assignee required in paragraph 6.4 of this Agreement shall be provided to the Department for the Covenant Not to Sue to be effective with respect to the transferee or assignee.

12.3. All of the rights, benefits and obligations conferred upon Settling Respondent under this Agreement, including any applicable ELUR, may be assigned or transferred in part to any person only with the prior written agreement of the Department, the Settling Respondent and the transferee/assignee. In the event of such transfer or assignment, however, the written consent from the transferee or assignee required in Paragraph 6.4 of this Agreement shall be provided to the Department for the covenant not to sue to be effective with respect to the transferee or assignee.

12.4. In no case may a Responsible Party, as that term is defined in the Remediation Regulations, become a lessee, sublessee, assignee or transferee or otherwise benefit from the State's Covenant Not to Sue.

13. DOCUMENT RETENTION

13.1. The Settling Respondent agrees to retain and make available to the Department all business and operating records, contracts, site studies and investigations, and documents relating to operations and activities at the Property related to the remedial action, including any applicable ELUR or required monitoring, for at least ten (10) years after the LOC is issued by the Department, unless otherwise agreed to in writing by the Parties. At the end of ten years, the Settling Respondent shall notify the Department of the location of such documents and shall provide the Department with an opportunity to copy any documents at the expense of the Department.

13.2. The Performing Party agrees to retain and make available to the Department all business and operating records, contracts, site studies and investigations, and documents relating to operations and activities at the Property related to the remedial action, including any applicable ELUR or required monitoring, for at least ten (10) years after the LOC is issued by the Department, unless otherwise agreed to in writing by the Parties. At the end of ten years, the Performing Party shall notify the Department of the location of such documents and shall provide the Department with an opportunity to copy any documents at the expense of the Department.

14. PAYMENT OF COSTS

14.1. If the Settling Respondent fails to comply with any of the terms of this Agreement, the Settling Respondent shall be liable for all litigation expenses (including reasonable attorney's fees) and other enforcement costs incurred by the Department to enforce this Agreement or otherwise obtain compliance.

14.2. If the Performing Party fails to comply with any of the terms of this Agreement, the Performing Party shall be liable for all litigation expenses (including reasonable attorney's fees) and other enforcement costs incurred by the Department to enforce this Agreement or otherwise obtain compliance.

15. NOTICES AND SUBMISSIONS

15.2 All notices and submissions required pursuant to the Agreement shall be forwarded by the Settling Respondent or the Performing Party to:

RIDEM Office of Waste Management
c/o**[insert Project Manager's name and title]**
235 Promenade Street
Providence, RI 02908

16. EFFECTIVE DATE

16.1. The effective date of this Agreement shall be the date upon which the Department has fully executed the Agreement after review of and response to any public comments received.

17. CONTRIBUTION PROTECTION

17.1. Pursuant to Rhode Island General Laws Section 23-19.14-12, the Parties hereby agree that the Settling Respondent has resolved its liability to the State and shall not be liable for claims for contribution regarding the response actions taken or to be taken and response costs incurred or to be incurred by the State or any other person with respect to the Existing Contamination at the Site.

17.2. The Settling Respondent agrees that, with respect to any suit or claim for contribution brought by the Settling Respondent for matters related to this Agreement, the Settling Respondent shall notify the Department in writing no later than sixty (60) days prior to the initiation of such suit or claim.

17.3. The Settling Respondent also agrees that, with respect to any suit or claim for contribution brought against the Settling Respondent for matters related to this Agreement, the Settling Respondent shall notify in writing the Department within ten (10) days of service of the complaint on the Settling Respondent.

18. PUBLIC COMMENT

18.1. This Agreement shall be subject to a fourteen (14) day public comment period, after which the Department may modify or withdraw its consent to this Agreement if comments received, disclose facts or considerations, which indicate that this Agreement is inappropriate, improper or inadequate.

18.2 Copies of this Agreement shall be sent to the chief executive officer of the city or town and president of the city or town council no later than the initiation of the public notice required under Section 18.1.

Executed as a sealed instrument as of the latest date set forth below.

State of Rhode Island
Department of Environmental Management

By:

_____

Leo Hellested, P.E. Chief Date
Office of Waste Management

It is so agreed:

[insert name of Settling Respondent]

By:

_____

Date

It is so agreed:

[insert name of Performing Party]

By:

_____

Date

Appendix F-3 – Distressed Property Settlement Agreement (To Be Developed)

Appendix G GrowSmart RI Recommendations

	BROWNFIELDS CONFERENCE RECOMMENDATIONS
PROVIDE LEADERSHIP AND COORDINATION -- GOVERNOR AND GENERAL ASSEMBLY	
REC	Establish an Ombudsman's Office for properties recycling and Brownfields in governor's office
REC	Governor's Council on Growth Issues should recommend specific policies for supporting Brownfields
STRENGTHENING STATE AGENCY ORGANIZATION AND STAFFING	
REC	Reorganize DEM's approach to Brownfields to serve site cleanup projects more efficiently.
REC	Assign at least one or two more full time staff to Office of Waste Mgmt for Brownfields program
REC	Explore developing a Licensed Environmental Professional (LEP) program for Rhode Island.
REC	Ensure that there is adequate funding for EDC to have at least one full-time staff person working on Brownfields
REC	EDC should make promotion of RI's Brownfields program a high priority
REC	Written materials also need to be upgraded. We urge DEM and EDC to establish specific deadlines for upgrading their communication materials and to allocate resources within their budgets to bring in outside consultants to develop the web site and achieve effective and expeditious changes in printed materials.
REC	Develop a statewide inventory of potential redevelopment sites
FINANCIAL ASSISTANCE	
REC	Governor should establish a working group to develop a Brownfields financial incentive/assistance proposal for 2002 session.
REC	A task force should be assembled immediately to review the results to date of the Mill Revitalization Act, to analyze current legislative proposals to modify the Act, and to recommend any further revisions deemed necessary to strengthen the act in a cost effective manner.
REC	OMBUDSMAN'S OFFICE SHOULD HELP MUNICIPALITIES/DEVELOPERS IDENTIFY FEDERAL FUNDING
PROTECTION AGAINST LIABILITY	
REC	Establish environmental insurance program for Brownfields, similar to Massachusetts
REC	Provide statutory relief for municipalities, redevelopment authorities, and community development corporations.
COORDINATION BETWEEN STATE AGENCIES AND MUNICIPALITIES	
REC	DEM and EDC need to work with municipalities
REC	Municipalities should encourage Brownfields redevelopment by forgiving back taxes, waiving local permitting fees
ARSENIC LEVELS	
REC	DEM should raise standard for reporting arsenic concentrations
PUBLIC EDUCATION AND INFORMATION ABOUT EXISTING PROGRAMS	
REC	General public awareness is critical for an issue that is so complex and negatively perceived. Some efforts can begin immediately via the media. We were disappointed by the lack of media attention to the Brownfields conference itself, although Mayor Bollwage's presence in Rhode Island for the conference did result in an Op Ed piece in the *Providence Journal* and an interview in the *Providence Business News*. Grow Smart has used the release of the recommendations report as another opportunity to generate some media coverage, and planners in several communities have helped to identify projects that could "localize" the subject for the media.
REC	We also encourage conference attendees to think about ways to use conferences, newsletters and other public information outlets to educate their individual constituencies about the Brownfields issue and to relate Brownfields to their constituencies' specific interests. For example, the Rhode Island Historical Preservation & Heritage Commission will include a Brownfields session in its spring conference.
REC	If specific programmatic goals, such as a bond issue to finance Brownfields redevelopment assistance or new legislation, are introduced, then there will be a need for an orchestrated public education campaign.

Appendix H Marginal Risk Policy

Marginal Risk Sites

This policy is promulgated to further the Department of Environmental Management's goals of protecting environmental quality and public health while promoting efficiency and accountability.
Implementation of this policy will streamline the way DEM reviews projects that do not pose significant environmental or human health risks. Resources that are currently used to review these "marginal risk sites" will be spent in reviewing and cleaning up sites that have more significant environmental impact. In addition, DEM staff often spends considerable time and effort in reviewing submissions that are incomplete or do not provide sufficient information to allow DEM to approve the submittal. Implementation of this policy will improve the quality of submissions, clarify the requirements for approval of remedial actions on "marginal risk sites", and reduce the review time.

This policy establishes review time guidelines for "marginal risk sites". The policy applies to sites that are located in GB and GA/GAA groundwater aquifers. It also encourages the removal of waste material and sets information requirements for the Site Investigation Report. Presumptive remedies that can be implemented are also identified. DEM will endeavor to review applications that adequately address these requirements within 42 days. However, this guideline for DEM review factors in a public notice requirement. If there is substantial public comment on the proposal, DEM may not be able to meet this review time guideline.

Review guidelines are predicated on DEM receiving complete submissions that are of sufficient quality to review. If these submissions do not address all the elements of the policy, DEM will reject the submission as a "marginal risk site" and will evaluate it in the normal process where there are no firm time review guidelines or presumptive remedies.

The following criteria below outline what are the accepted site conditions and commitments for performing parties submitting a "Marginal Risk Site" pursuant to the Remediation Regulations for review and approval. The criteria have been broken down into two categories:

A. Sites within a defined GB groundwater aquifer
B. Sites within a defined GB or GA/GAA where the Performing Party has committed in writing to the Department to meet all Method 1 Residential Direct Exposure Criteria for surface soils meet all applicable Leachability Criteria and meet all the applicable Groundwater Objectives.

A. Sites within a GB groundwater aquifer

The Performing party must notify the Department, identify the submittal as a "marginal risk site" request, and submit a Site Investigation Report (SIR) that documents in sufficient detail that:

- The SIR is complete and adequately addresses all of the requirements of Section 7 of the Remediation Regulations. At a minimum, the site investigation must have adequately characterized groundwater and soil conditions throughout the site, including an evaluation of upgradient and downgradient property line conditions and in areas of recognized environmental concerns. Further, the analytical testing program must consider analytes associated with known or suspected releases, and hazardous materials for which applicable Method 1 criteria exist.

- The site is in a GB aquifer.
- The site is not within a 100 year flood plain
- The release is not in contact with the water table (including seasonal fluctuations) and does not have the potential to become in contact with the water table
- Analytical data indicating that any detected concentrations in groundwater are less than 50% of the Method 1 GB groundwater criteria
- There are no Method 1 GB Leachability exceedances for soils
- Groundwater sampling has been performed for all substances that are found in any soil sample that is 50%, or above, the UCL. The groundwater sampling results must show no net increase in concentration across the site
- No soil sample exceeds the UCL
- The soil demonstrating the highest total concentrations has been tested for inorganic (metals) TCLP/SPLP. All results must be below hazardous levels
- The first bail of all onsite groundwater well(s) has been evaluated for sheens, and that there is no sheen or floater contamination present on the water table.
- The property is currently non-residential use and shall remain non-residential use by agreeing to record an ELUR.
- There are no known public concerns or public interest.
- There is no actual or potential impact to environmental sensitive receptors.
- The Public Notice to abutters has been performed.

Should all of the above mentioned criteria be met and the Department determines that the SIR is complete; the Department will issue a Remedial Decision Letter expeditiously. The following are presumptive remedies that can be presented in the notification or submitted after the RDL is issued.

1. Capping- pre-approved capping alternatives are as follows:
    a. 2 foot clean soil cap with ELUR
    b. 6” clean soil cap with 4 inches of asphalt pavement (minimum) with ELUR.
    c. 1 foot of clean soil over a geofabric material meeting an acceptable puncture strength, and Mullen burst strength and water flow rate with ELUR.

2. Removal of release of all jurisdictional waste materials with confirmation sampling.

3. After the public notice and submittal of the RAWP, the Department will expeditiously issue a Remedial Approval Letter

B. Removal of Jurisdictional Material

1. Should the Department receive a written commitment from a Performing Party that includes a plan to completely remove all jurisdictional media and achieve the Method 1 Residential Direct Exposure criteria and the applicable leachability criteria for subsurface soils, the Department will issue a Remedial Decision Letter (RDL) expeditiously. This is provided that the groundwater is at or below 75% of the applicable Method 1 Criteria

2. The Remedial Decision Letter will indicate that public notice shall occur.

3. The written commitment may include a Remedial Action Work Plan (RAWP) that describes the proposed confirmation sampling, or this may be submitted after the issuance of the RDL.

4. Pre-approved confirmation sampling is as follows (NOTE: all samples must be grab samples, no composite sampling will be accepted, and samples shall be biased towards previously known areas of contamination):
    a. For excavations with no side greater than 25 feet and no deeper than 5 feet; 1 sample per side and 1 bottom (minimum of 5 samples)
    b. For excavations with any side walls greater than 25 feet and no deeper than 5 feet; 1 per every 25 feet of side wall (minimum of 4 samples) and 1 bottom sample every 625 square feet
    c. For excavations with any sidewalls greater than 25 feet and deeper that 5 feet; 1 sample per 25 feet of sidewall and 1 sample every 5-foot of wall height (minimum of 4 samples) and 1 bottom sample every 625 square feet.

5. After the public notice and submittal of the RAWP, the Department will expeditiously issue a Remedial Approval Letter.

In both A and B above, the Department will require a Remedial Action Summary Report at the conclusion of the remedy. After review and approval of this Remedial Action Summary Report the Department will issues a Letter of Compliance for the site.

C. Review Schedule

Should the Department determine that the Marginal Risk Policy is applicable to the site, it will endeavor to complete an expeditious review and approval of the application in accordance with the follow schedule.

Date	Event/Milestone
Day 1	Notification of Release/Application for Marginal Risk Sites status
Day 30 (Or sooner)	Program Letter – approval of Marginal Risk Sites status – SIR complete - initiate public notice
Day 37	Public notice period ends
Day 42	Remedial Approval Letter

Note that the receipt of substantive comments from the public may interrupt this anticipate review and approval schedule. The applicant will be so notified in the event of this circumstance.

Appendix I Arsenic Policy

OFFICE OF WASTE MANAGEMENT

Policy Memo 00-01 **July 13, 2001**

GUIDANCE FOR ARSENIC IN SOIL

1.0 PURPOSE

This policy establishes an approach for determining soil remedial objectives for arsenic at sites regulated under the Rhode Island Departmental of Environmental Management (the Department) Office of Waste Management. The policy is being adopted to alleviate difficulties encountered at sites at which the concentrations of arsenic exceed existing Method 1 Residential or Industrial/Commercial Direct Exposure Criteria, and to facilitate acceptable and timely advancement of contaminated sites through the site remediation process. This policy is developed under the authority of Rhode Island General Laws, Chapters (as applicable) and shall be construed to be consistent with the *Rules and Regulations for the Investigation and Remediation of Hazardous Materials Releases* (March 1993, amended August 1996) (short title, "Remediation Regulations").

2.0 BACKGROUND

Arsenic is a naturally occurring element; the 20th most abundant element in the earth's crust. Arsenic is usually found in the environment combined with other elements, such as oxygen, chlorine and sulfur, or in organic form. Inorganic arsenic occurs naturally in many kinds of rock, especially ores that contain copper, lead, iron, nickel, and other metals. Studies of background levels of metals in Rhode Island soils have identified that the mean arsenic soil concentrations in Rhode Island appeared lower than the national average, as discussed in Section 3.0. Further, RI's concentration of arsenic is lower than certain other New England States due to the fact the State of RI is not part of the Connecticut River Valley geological formation. The Connecticut River Valley geological formation has elevated levels of arsenic. The State of RI is part of the New England Coastal geological formation, which has lower levels of arsenic.

In additional to its natural occurrence in soils, arsenic has also historically been used in a variety of commercial applications. The principal (74%) use of arsenic is as a component of a wood preservative. Most of the remaining use (19%) is in the production of agricultural chemicals, such as insecticides, herbicides, algaecides, and growth stimulants. Smaller amounts have been used in the production of glass, nonferrous alloys, in the electronics industry and in medicine.

The U.S. Environmental Protection Agency (US EPA), the International Agency for Research on Cancer (IARC), and the National Toxicology Program (NTP) classify arsenic as a human carcinogen. Epidemiological studies have shown that inhalation exposure to inorganic arsenic increases the risk of a variety of forms of lung cancer. Most of these studies involved worker exposure to arsenic trioxide dust at copper smelters or arsenate at chemical plants. Epidemiological studies have also shown that ingestion of inorganic arsenic increases the risk of developing skin cancer, most commonly squamous and basal cell carcinomas. In addition, evidence exists that ingestion of arsenic may also increase the risk of certain internal cancers, including tumors of the bladder, kidney, and liver.

For these reasons, the US EPA regulates arsenic as a carcinogen and has developed a variety of toxicity values for use in setting remedial objectives for arsenic. While the US EPA has not established a national regulation regarding arsenic in soil, its generic soil screening level (SSL) for arsenic in soil is 0.4 mg/kg, corresponding to a cancer risk level of one-in-one-million (denoted $1x10^{-6}$) for exposure through soil ingestion (US EPA, 1996).

3.0 THE REMEDIATION REGULATION'S ARSENIC STANDARDS

Methods for establishing remedial objectives for hazardous substances in the State of Rhode Island are specified in the Remediation Regulations. According to Rule 8.01 of the Remediation Regulations, five regulatory requirements must be met when establishing remedial objectives for a hazardous substance. These requirements are as follows:

- The remedial objective for a carcinogenic substance does not exceed a $1x10^{-6}$ excess lifetime cancer risk and the cumulative excess cancer risk posed by the contaminated-site does not exceed $1x10^{-5}$;
- The remedial objective for each non-carcinogenic substance does not exceed a hazard index of 1, and the cumulative hazard index posed by the contaminated-site does not exceed 1 for any target organ;
- The remedial objective will not significantly contribute to adverse effects to any environmentally sensitive areas at or in the vicinity of the contaminated-site;
- The remedial objective will be protective of the natural resources of the State, including but not limited to groundwater; and
- The remedial objective shall address the requirements of Rule 8.07 (Upper Concentration Limits)

Rule 8.01 also states "Concentration-based soil and groundwater objectives may consider background conditions".

The Remediation Regulations establish default or Method 1 remedial objectives in soil and groundwater for a select group of substances. Soil remedial objectives are developed for Direct Exposure, Leachability, and Upper Concentration Limits. The Method 1 soil remedial objectives established for arsenic in the Remediation Regulations are shown below:

Land Use	Direct Exposure Criterion (mg/kg)	Upper Concentration Limit (mg/kg)
Residential	1.7	10,000
Industrial/Commercial	3.8	10,000

The Remediation Regulations have not established Groundwater Objectives or Leachability Criteria for arsenic.

The Method 1 Residential Direct Exposure Criterion for arsenic of 1.7 mg/kg is not a risk-based value, but was adopted from a state-wide study of background arsenic concentrations summarized in a document entitled *Background Levels of Priority Pollutant Metals in Rhode Island Soils* (RIDEM, undated). Background, as defined in Rule 3.05 of the Remediation Regulations, shall mean the ambient concentration of hazardous substances present in the

environment that have not been influenced by human activities, or the ambient concentrations of hazardous substances consistently present in the environment in the vicinity of the site which are the result of human activities unrelated to releases at the contaminated site.

In the background study, a statewide geometric mean arsenic concentration of 1.67 mg/kg was calculated from 105 samples collected throughout the State. A risk-based soil objective for arsenic, based on its potential carcinogenic effects and default residential exposure assumptions specified in the Remediation Regulations, is 0.4 mg/kg. Because the risk-based value is below the State geometric mean background concentration, the mean background concentration (rounded to 1.7 mg/kg) was promulgated as the Method 1 Residential Direct Exposure Criterion. The lifetime incremental cancer risk value associated with this criterion is four-in-one-million ($4x10^{-6}$).

4.0 STATEMENT OF PROBLEM

Since implementation of the Remediation Regulations, arsenic in soil has been detected at investigated sites at concentrations above the Method 1 Residential and Industrial/Commercial Direct Exposure Criteria. At these sites, the Department would require site-specific background determinations to be performed to determine that there has been no release of arsenic. In the past, these comprehensive background investigations have been required without consideration either to the magnitude of exceedences of the criteria or to site-specific factors. As a result, at many sites it has been both cost- and time-prohibitive to determine that the arsenic present at the site is consistent with background levels and not the result of a release of arsenic.

SOLUTION METHODOLOGY

The Department has evaluated two background arsenic studies for soil samples collected within the boundaries of the State. The results of the first study, which was based upon 105 samples, indicated that the mean background concentration of arsenic in the State was 1.67 PPM. This arsenic concentration is based on data points extracted from Department site files that constitute the full inventory of sites. A second study (pending publication) conducted after the finalization of the Remediation Regulations evaluated 338 samples and confirmed the findings of the first study. Therefore the Department is proposing to retain its current Residential Direct Exposure Criteria of 1.7 PPM and raise the Industrial/Commercial Direct Exposure Criteria to 7 PPM.

The Department recognizes that background concentrations may be above the Statewide average at any particular site. In addition, the distribution of data used to determine the statewide average overlaps the distribution associated with contaminated sites. Therefore, the Department will require a tiered approach to determine if the concentrations observed at a site are background; which will determine, in part, the need for remedial action. For Industrial/Commercial sites, a performing party that does not wish to demonstrate that the concentrations between 1.7 PPM and 7 PPM are background may propose an ELUR limiting the reuse of the site to Industrial/Commercial activity as the remedial alternative.

The tiered approached is based upon a statistical evaluation of the statewide background data. Accordingly, the Department will continue to require reporting at the current Direct Exposure Criteria of 1.7 PPM. Above this value, an evaluation will be required in order to determine whether the observed concentrations at a particular site reflect either a release or a background condition. The requirements for this evaluation, which are outlined below, reflect the statistical distribution observed in the statewide background studies. In this tiered system the level of documentation and investigation will be lower for sites whose concentration are near the mean

and more for sites which are further away from the mean. Previously the same level of documentation and investigation was required at all sites independent of the observed concentration.

Background determinations for concentrations within Tier 1 and Tier 2 will be the responsibility of an Environmental Professional. An Environmental Professional must submit a background certification (see attached) that the site conditions are background. This certification must document that the concentrations are background. The certification must include a discussion including but not limited to the information listed in each tier below.

Tier 1: Concentrations of arsenic between 1.7 PPM and 4 PPM

Background certifications in this tier must include, at a minimum, the following:

- Submittal of an evaluation of the spatial distribution of analytical data to determine if concentrations of arsenic are unrelated to potential releases throughout the site;

- Submittal of an evaluation of the site's history to determine if arsenic was used onsite and could have contributed to a release; and

- The remediation goal will be the site-specific background level determined by the study.

If certified to be background the Department will issue a Non- Jurisdictional Letter based on the certification. The certification that site condition is background is the responsibility of the Environmental Professional.

If determined by the Environmental Professional to be a release, the notification should include proposed best management practices as a remedy for the site. These best management practices typically include:

- excavation
- use of engineered controls such as a soil or asphalt cap with an appropriate Environmental Land Usage Restriction (ELUR);
- phytoremediation with compliance sampling;
- soil blending with compliance sampling; and/or
- soil washing with compliance sampling.

Tier 2: Concentrations of arsenic between 4 PPM and 7 PPM

Background certifications in this tier must include the, at a minimum, the following:

- Submittal of an evaluation of the spatial distribution of analytical data to determine if concentrations of arsenic are unrelated to potential releases throughout the site;

- Submittal of an evaluation of the site's history to determine if arsenic was used onsite and could have contributed to a release;

- Submittal of an evaluation surrounding sites data via file reviews; and

- The remediation goal will be set at the site-specific background level determined by the study.

If certified to be background the Department will issue a Non- Jurisdictional Letter based on the certification. The certification that site condition is background is the responsibility of the Environmental Professional.

If determined by the Environmental Professional to be a release, the notification should include proposed best management practices as a remedy for the site. These best management practices typically include:

- Excavation
- Engineered controls such as a soil or asphalt cap with an appropriate Environmental Land Usage Restriction (ELUR);
- Phytoremediation with compliance sampling;
- Soil blending with compliance sampling; and/or
- Soil washing with compliance sampling.

In some cases the performing party may not wish to demonstrate that concentrations between 1.7 PPM and 7 PPM are background due to time or expense. For these sites with all sample concentrations below 7 PPM, a performing may propose an ELUR restricting the use of the site to Industrial/Commercial activity as the preferred remedial alternative.

Tier 3: Concentrations of arsenic above 7 PPM

Arsenic concentrations above 7 PPM will be assumed by the Department as attributable to a release and will automatically require some level of response action as outlined in the Remediation Regulations, consistent with exceedances of any other Method 1 Residential Direct Exposure Criterion including, but not limited to, a full background study.

Department will require a full site-specific background study concentrations above 7 PPM. This study will be used to determine the site-specific remedial goal. The background study proposal should at a minimum include, but not be limited to, the proposed sampling locations (including reasoning and justification for selection), plans for soil type classification to confirm that the proposed soil sampling locations have the same characteristics as the soil at the site, procedures for obtaining access (i.e. permission) to sample any proposed off-site background locations, the proposed statistical method to be used to evaluate the collected data, and the proposed analytical testing method.

Residual levels of arsenic above 7 PPM or the site-specific background concentration will not be allowed to remain on-site unless there is an approved engineered control in place with an associated ELUR requiring maintenance of the remedy (for the case of Industrial/Commercial reuse, no engineered control will be required below 7 PPM). This approach is consistent with the Department's regulation of other sites in the program that have residual exceedances of any Method 1 Direct Exposure Criterion. This approach does not preclude performing parties from exercising their options under the Remediation Regulations to conduct Method 3 risk assessments or site-specific background determinations.

It is important to note that 7 PPM and/or the site-specific background concentration may exceed both the risk-derived residential arsenic concentration (0.4 mg/kg) and the risk-derived industrial/commercial arsenic concentration (3.8 mg/kg). Subsequently, compliance with the site-specific background concentration may result in increased risk at the site posed by residual

arsenic existing below the level that is considered jurisdictional. Furthermore, since the site-specific background concentration will functionally demarcate the transition between a release-driven issue and a health-driven issue, the Department of Health (DOH) may provide additional guidance regarding proper management of residual arsenic concentrations. Finally, all soils must be managed in accordance with the Department's current and future requirements and polices.

Arsenic Background Certification

Arsenic Background Certifications must include the following statements signed by an authorized representative of the party specified and a completed checklist:

A. A statement signed by an authorized representative of the person who prepared the Background Certification certifying the completeness and accuracy of the information contained in that report to the best of their knowledge; and

B. A statement signed by the performing party responsible for the submittal of the Background Certification certifying that the report is a complete and accurate representation of the contaminated site and the release and contains all known facts surrounding the release to the best of their knowledge.

Please complete the below checklist by checking the boxes that the appropriate information is contained in the background certification submittal.

Tier 1: Concentrations of arsenic between 1.7 PPM and 4 PPM

Background Certifications in this tier must include, at a minimum, the following:

- All samples are less than 4 PPM;
- Submittal of an evaluation of the spatial distribution of analytical data to determine if concentrations of arsenic are unrelated to potential releases throughout the site; and
- Submittal of an evaluation of the site's history to determine if arsenic was used onsite and could have contributed to a release;

Tier 2: Concentrations of arsenic between 4 PPM and 7 PPM

Background certifications in this tier must include the, at a minimum, the following:

- All samples are less than or equal to 7 PPM;
- Submittal of an evaluation of the spatial distribution of analytical data to determine if concentrations of arsenic are unrelated to potential releases throughout the site;
- Submittal of an evaluation of the site's history to determine if arsenic was used onsite and could have contributed to a release; and
- Submittal of an evaluation surrounding sites data via file reviews.

Appendix J - DEM Schedule for Implementing Recommendations

DEM Schedule for Implementing Recommendations				
No.	**Recommendation**	**Status**	**Priority**	**Implementation Date**
	Regulatory Recommendations			
1	Review the DEM tanks regulations for streamlining opportunities.			
2	OWM should amend its regulations indicating the Table 1 Direct Exposure Criteria for arsenic for Industrial / Commercial will be raised from 3.8 mg/kg to 7.0 mg/kg.			
3	DEM should use the same language and terminology in all the regulations.			
4	DEM should give consideration to the guidance established in the Massachusetts regulations (MA DEP GW-3 MCP) for evaluating ecological risks and risks to surface water bodies.			
5	DEM should revise its regulation to allow the regulated community to pay for an expedited review of the risk assessments through the use of the OWM's technical assistance contractor			
6	The regulations should require the imposition of yearly fees for sites that want to establish Environmental Land Use Restrictions in order to encourage removal of contaminated material from sites.			
7	DEM should revise its regulations to require notifications of municipalities and watershed groups when the performing party publishes the notice concerning the Settlement Agreement.			
	Policy Recommendations			
1	OWM should adopt the Marginal Risk Policy that was approved by the Task Force.			
2	DEM need to finalize and begin to utilize the model Settlement Agreement for sites that are covered by the Brownfields Program.			
3	In order to clarify the scope of Brownfields projects DEM should encourage pre-submission meetings with potential developers.			
4	Brownfields projects are often located in urban areas and there is a need to work and communicate with community groups about site specific issues. These projects can often provide job opportunities and other benefits to the host community. DEM will work to ensure the process will be protective of human health and protective of further environmental degradation DEM's Environmental Equity program should reflect the beneficial nature of Brownfields projects and should not be an impediment for the constructive reuse of these sites.			
5	OWM should re-institute regularly scheduled meetings to discuss issues of interest in order to increase the trust levels of stakeholders in the Brownfields and Site Remediation community.			
6	DEM should develop a working relationship with the EDC, the environmental consulting and distressed properties legal community to use EPA targeted funds to characterize and possibly remediate distressed properties.			
	Administrative Recommendations			
1	DEM should disseminate notes from the pre-application meetings within 10 in order to identify any miscommunications or misunderstandings concerning the project.			
2	OWM should assist GrowSmart RI with the development of a statewide inventory of Brownfields sites.			
3	OWM should expand the notification of abutters to the project site at the time of completion of the investigation and when the remedy is proposed to municipal governments and watershed groups			
4	DEM should review its final letter to ensure it includes concerns from all environmental programs.			

5	To ensure application completeness and standardize review, submissions should address all requirements of section 7 of the regulations (Site Investigation). Submissions should state if a particular specific rule is not applicable to a site.			
6	Consistency of DEM reviews could be helped by the use of the administrative / review technical checklist.			
7	The Office of Waste Management will designate a lead contact person who will be responsible for coordinating appropriate meetings with the receiver and all DEM offices that have regulatory oversight of the distressed property.			
8	DEM should develop another model settlement agreement to take into consideration the special requirements of a distressed property.			
9	DEM should investigate the cost of environmental insurance to determine if this instrument could be used to provide certainty in the remediation of distressed properties.			
	Outreach Recommendations			
1	DEM should develop fact sheets or guidance materials that detail DEM's regulatory framework for site remediation projects. All impacted DEM programs should be described in this document that should include reporting requirements and remediation standards			
2	OWM should increase its coordination efforts of Brownfields projects that are undergoing review with watershed groups, local governments, citizens groups and impacted people. DEM should convene a stakeholder group to review existing policies and recommendations of the Task Force concerning outreach to impacted communities.			
3	DEM should increase its public outreach efforts that explain the goals of the program through an expanded web presence. OWM should also develop simple brochures covering such topics as "What are Brownfields?", "How to Hire a Consultant" and "How to Address Environmental Contamination".			
4	OWM should co-host a workshop on "Adequate Site Investigation Submissions". In this way the consultant community could learn by the mistakes of others. This workshop could discuss case studies about approaches that worked / did not work.			
5	OWM should work with the Rhode Island Society of Environmental Professionals (RISEP), and perhaps the RI Bar Association to develop a training course that could address some of the issues that were raised by the Task Force, such as application quality.			
6	OWM should finalize an administrative completeness checklist that could be used as a guide by an applicant for site remediation submissions.			
7	DEM should develop, publish and distribute guidance material and policy directives about the regulations using the DEM homepage and traditional outreach mechanisms.			
8	In order to increase the number of distressed properties cleaned up; DEM should discuss this issue using the Rhode Island Bar Association's committee structure, i.e. the Environmental Law and Debtor/Creditor committees.			
9	DEM should convene a group within six months, to review the existing policies and procedures relating to community notification and make recommendations for any necessary change.			

Appendix J –1

Appendix J –1 Ranking of DEM Schedule for Implementing Recommendations Ranking Scale: 3 = High, 2 = Medium and 1 =Low		
No.	**Recommendation**	
	Regulatory Recommendations	Average
1	Review the DEM tanks regulations for streamlining opportunities.	2.5
2	OWM should amend its regulations indicating the Table 1 Direct Exposure Criteria for arsenic for Industrial / Commercial will be raised from 3.8 mg/kg to 7.0 mg/kg.	2.8
3	DEM should use the same language and terminology in all the regulations.	1.9
4	DEM should give consideration to the guidance established in the Massachusetts regulations (MA DEP GW-3 MCP) for evaluating ecological risks and risks to surface water bodies.	1.6
5	DEM should revise its regulation to allow the regulated community to pay for an expedited review of the risk assessments through the use of the OWM's technical assistance contractor	1.8
6	The regulations should require the imposition of yearly fees for sites that want to establish Environmental Land Use Restrictions in order to encourage removal of contaminated material from sites.	1.5
7	DEM should revise its regulations to require notifications of municipalities and watershed groups when the performing party publishes the notice concerning the Settlement Agreement.	1.5
	Policy Recommendations	
1	OWM should adopt the Marginal Risk Policy that was approved by the Task Force.	2.9
2	DEM need to finalize and begin to utilize the model Settlement Agreement for sites that are covered by the Brownfields Program.	2.6
3	In order to clarify the scope of Brownfields projects DEM should encourage pre-submission meetings with potential developers.	2
4	Brownfields projects are often located in urban areas and there is a need to work and communicate with community groups about site specific issues. These projects can often provide job opportunities and other benefits to the host community. DEM's Environmental Equity program should reflect the beneficial nature of Brownfields projects and should not be an impediment for the constructive reuse of these sites.	1.9
5	OWM should re-institute regularly scheduled meetings to discuss issues of interest in order to increase the trust levels of stakeholders in the Brownfields and Site Remediation community.	1.9
6	DEM should develop a working relationship with the EDC, the environmental consulting and distressed properties legal community to use EPA targeted funds to characterize and possibly remediate distressed properties.	2.2

Appendix J –1 Task Force Ranking of Recommendations Ranking Scale: 3 = High, 2 = Medium and 1 =Low		
No.	**Recommendation**	Average
	Administrative Recommendations	
1	DEM should disseminate notes from the pre-application meetings within 10 in order to identify any miscommunications or misunderstandings concerning the project.	1.9
2	OWM should assist GrowSmart RI with the development of a statewide inventory of Brownfields sites.	2.2
3	OWM should expand the notification of abutters to the project site at the time of completion of the investigation and when the remedy is proposed to municipal governments and watershed groups	1.9
4	DEM should review its final letter to ensure it includes concerns from all environmental programs.	1.9
5	To ensure application completeness and standardize review, submissions should address all requirements of section 7 of the regulations (Site Investigation). Submissions should state if a particular specific rule is not applicable to a site.	2.3
6	Consistency of DEM reviews could be helped by the use of the administrative / review technical checklist.	2.2
7	The Office of Waste Management will designate a lead contact person who will be responsible for coordinating appropriate meetings with the receiver and all DEM offices that have regulatory oversight of the distressed property.	2.2
8	DEM should develop another model settlement agreement to take into consideration the special requirements of a distressed property.	1.6
9	DEM should investigate the cost of environmental insurance to determine if this instrument could be used to provide certainty in the remediation of distressed properties.	1.4
	Outreach Recommendations	
1	DEM should develop fact sheets or guidance materials that detail DEM's regulatory framework for site remediation projects. All impacted DEM programs should be described in this document that should include reporting requirements and remediation standards	2.3
2	OWM should increase its coordination efforts of Brownfields projects that are undergoing review with watershed groups, local governments, citizens groups and impacted people. DEM should convene a stakeholder group to review existing policies and recommendations of the Task Force concerning outreach to impacted communities.	1.7
3	DEM should increase its public outreach efforts that explain the goals of the program through an expanded web presence. OWM should also develop simple brochures covering such topics as "What are Brownfields?", "How to Hire a Consultant" and "How to Address Environmental Contamination".	1.6
4	OWM should co-host a workshop on "Adequate Site Investigation Submissions". In this way the consultant community could learn by the mistakes of others. This workshop could discuss case studies about approaches that worked / did not work.	1.6
5	OWM should work with the Rhode Island Society of Environmental Professionals (RISEP), and perhaps the RI Bar Association to develop a training course that could address some of the issues that were raised by the Task Force, such as application quality.	1.8
6	OWM should finalize an administrative completeness checklist that could be used as a guide by an applicant for site remediation. submissions.	2.4
7	DEM should develop, publish and distribute guidance material and policy directives about the regulations using the DEM homepage and traditional outreach mechanisms.	2
8	In order to increase the number of distressed properties cleaned up; DEM should discuss this issue using the Rhode Island Bar Association's committee structure, i.e. the Environmental Law and Debtor/Creditor committees.	1.6

Appendix K – Brownfields Program Policy / Mission Statement

Brownfields are vacant or underutilized commercial or industrial properties where actual or suspected contamination presents a barrier to beneficial use.

The mission of the Brownfields program is to ensure proper investigation and clean up of these properties and actively support their reuse and redevelopment.

In order to meet this mission, the Brownfields program will:

- Ensure the process will be protective of human health and protective of further environmental degradation.
- Oversee projects to ensure they comply with applicable requirements and standards, and serve as the single point of contact when multiple regulatory requirements apply;
- Work with residents, municipalities, and community groups to identify, investigate, clean up, and promote use of Brownfields sites;
- Provide assistance and work closely with interested parties to investigate and clean up sites in an efficient and cost-effective manner;
- Be understanding and responsive to the timelines and other requirements typically associated with property transactions; and,
- Actively promote the tools available and the successes of the program.