



RHODE ISLAND  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

235 Promenade Street, Providence, RI 02908-5767

TDD 401-222-4462

June 20, 2012

RE: April 2, 2012 Public Meeting and Subsequent Public Comments Regarding the Environmental History and Potential Environmental Conditions at Queen Anne Square Intersection of Mill, Thames, Spring and Church Streets, Newport, Rhode Island  
Newport Assessor's Plat 24, Lot 346  
**Case No. 2012-010**

Dear Stakeholders and Interested Parties:

On November 9, 2011, the Rhode Island Department of Environmental Management (the Department) amended the Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases, (the Remediation Regulations). The purpose of these regulations is to create an integrated program requiring reporting, investigation and remediation of contaminated sites in order to eliminate and/or control threats to human health and the environment in an efficient manner.

In the matter of the above referenced Site, the City of Newport, in accordance with the Public Involvement requirements under Rhode Island General Laws (R.I.G.L.), Title 23, *Health and Safety*, Chapter 23-19.14, *Industrial Property Remediation and Reuse Act*, Section 23-19.14-5, *Environmental Equity and Public Participation*, as well as Section 7.00, Rule 7.07.A.iii of the Remediation Regulations, scheduled and held a Public Meeting on April 2, 2012. The purpose of the meeting was to obtain information about conditions at the Site and the environmental history at the Site that may be useful in establishing the scope of the investigation of the Site and/or establishing the objectives for the environmental clean-up of the Site. The record of the meeting remained open for a period of ten (10) business days for the receipt of public comments, and concluded at 4:00pm on April 16, 2012.

During the public comment period, the Department's Office of Waste Management (OWM) received several documents including public comments about environmental conditions at the Site and the environmental history at the Site, submitted in accordance with Rule 7.07 of the Remediation Regulations. Copies of those written comments were submitted to the City of Newport and the Doris Duke Monument Foundation (DDMF) by the Department on April 18, 2012. In response, the OWM has received the following document submitted on behalf of the DDMF:

- Summary Report, April 2, 2012 Public Meeting and 10-Day Comment Period, Queen Anne Square (Assessor's Plat 24 Lot 346), Newport, Rhode Island, RIDEM Case No. 2012-10, (Summary Report), prepared by Sage Environmental, Inc. (Sage), and dated May 3, 2012.

The above referenced Summary Report documents the results of All Appropriate Inquiries, analysis and the Public Meeting, including the comment period, and includes responses to the comments received at the Public Meeting, as well as other written comments received by the Department, the City of Newport, the Newport Restoration Foundation (NRF) and/or the DDMF, during the public comment period, as well as a copy of the stenographer's transcript of the Public Meeting. All public documents related to the site may be viewed on the Department's dedicated web page located at <http://www.dem.ri.gov/programs/benviron/waste/queenan.htm>.

The City of Newport is the Responsible Party for this Site and the DDMF is the Performing Party for this Site. The Department has completed its review of Sage's responses to the public comments, which were prepared on behalf of the DDMF, and concurs with the responses. As was noted in the Summary Report, several of the comments received were directed specifically to the Department. Attachment 4 of the Summary Report included a complete inventory of each of the comments received. In order to maintain a consistent point of reference between this letter and the Summary Report, the Department has adopted the indexed numbering system utilized by Sage to reference each comment, which are addressed as appropriate below:

***1-1 Is it true that Sage did not test for PCB's and Dioxins? Why is this?***

Testing at the Site was not conducted for polychlorinated biphenyls (PCBs) or dioxin.

DEM does have regulations and promulgated standards for PCBs. Based upon the comments and concerns raised at the meeting and afterward, the revised scope of work will include collection of several soil samples for PCB laboratory analysis. If PCBs are detected, then any soil that is impacted above the applicable regulatory standards would likely require removal and proper off-site disposal at an appropriately licensed facility. The specific remediation requirements are dependent upon the concentrations detected, if any PCBs are detected at all.

DEM does not have promulgated standards for dioxin, and does not require sampling and analysis unless there is a known or likely source of dioxin documented at a site, and the responsible party or performing party (conducting the investigation and remediation) is proposing a remedy that would not address potential exposure concerns. In this case, there has been no documented source for dioxin at the Queen Anne Square site, and the likely remedy being discussed is a site-wide cap, which would be a protective barrier against exposure to all the contaminants that have been detected in soils to date, as well as any dioxin if it existed at the site.

***1-2 Regarding Sage, what assurances will DEM provide the citizens of Newport that Sage's test results will be reliable?***

The Department has not been presented with any reason to question the validity of the reporting and documenting of investigation activities, sampling procedures or analytical test results by Sage to date.

- ***Procedurally, could DEM require an independent source be used to corroborate Sage?***

There is nothing in the Remediation Regulations that addresses the question of verification of an environmental consultant by an independent source, and the Department has not been presented with any evidence to date suggesting that there is any problem with Sage's work at the Site.

**1-3 *What is Trinity's official status? Just an abutter?***

Currently Trinity Church owns property abutting the Queen Anne Square Site and would therefore be classified as an abutter to the Site.

**1.4 *If Trinity is "just an abutter", was there any soil testing done on Trinity's property? If not, why not?***

The Department is not aware of any soil or groundwater sampling or analytical laboratory testing performed on any of the abutting or nearby Trinity Church properties. If sampling was conducted on any Trinity property, and a reportable concentration of a contaminant was detected in soil or groundwater, Trinity Church (as owner of the property), would be obligated to notify the Department of the reportable release in accordance with Section 5.0 (Notification) of the Remediation Regulations. Because there have been specific allegations of potential contaminated soil existing on the Trinity Church property, the Department will likely recommend in a letter similar to the one that the City of Newport received on November 16, 2011, that Trinity Church conduct an investigation of their property for environmental impacts.

**1-5 *Presumably there was no benzene or toluene found in the Sage testing. Yet municipal records prove that there was a dry cleaner within the span of QAS on Frank Street.***

- ***Was this surprising, and if so, does this warrant more investigation?***

Testimony at the Public Meeting indicated that during the decommissioning of the former laundry and dry cleaning operations in 1977, the contents of various above ground tanks and drums were allegedly discharged to either the onsite sanitary sewer or the storm sewer. Soil and groundwater data obtained from samples collected in the area of the former dry cleaning facility did not identify evidence of petroleum, dry cleaning solvents or other volatile organic compounds (VOCs) to be present in soil and/or groundwater beneath this portion of the Site. The lack of evidence of releases of dry cleaning related chemicals to the Site may in part be explained by the alleged historic disposal practices which would have resulted in any discharged chemicals being transported away from the Site. Additional investigation for chemicals that were not targeted during the initial phases of the investigation, but which were later identified as potential contaminants of concern (i.e. PCBs), will be included in the revised Scope of Work to be conducted by Sage.

**1-6 Does the “rumor” of more contaminated land abutting the tested areas indicate a present problem or a potential one?**

As previously stated, the Department is not aware of any soil or groundwater sampling or analytical laboratory testing performed on any of the abutting or nearby properties. If sampling was conducted on any property, and a reportable concentration of a contaminant was detected in soil or groundwater, the property owner would be obligated to notify the Department of the reportable release in accordance with Section 5.0 (Notification) of the Remediation Regulations. Therefore, the “rumor” of more contaminated land may represent a potential problem, but to date there is no documentation of an existing release that falls within the jurisdiction of the Department.

**1-7 How far beyond the periphery of the actual “footprint” of the proposed project is required? i.e. 0 feet; 10 feet; or ??? feet?**

To date there is no evidence that contamination from the Queen Anne Square Site is migrating off site onto adjacent properties, and no evidence that potential contamination from adjacent properties is migrating toward the Queen Anne Square Site. Since there is no indication that the Site is impacting its neighbors, or being impacted by its neighbors, the Department will not be requiring the Performing Party for this project (i.e. the DDMF), to expand the investigation beyond the boundary of the subject Site.

**• Does DEM believe that the scope of the soil testing be extended beyond the current perimeters?**

As previously stated, since there is no indication that the Site is impacting its neighbors, or being impacted by its neighbors, the Department will not be requiring the DDMF to expand the investigation beyond the boundary of the subject Site.

**1-9 Some believe that the number of bore holes tested were insufficient to analyze the true dimensions and toxicity of the entire property. Who will determine what is procedurally correct?**

It is the Department’s role as the regulatory agency authorized to implement the Remediation Regulations, to review all information submitted regarding the investigation and the eventual remediation of jurisdictional releases of hazardous materials at the Site, and to determine if the submittals and work performed are compliant with the applicable requirements of the Remediation Regulations. Additional sampling will be conducted on the property after this stage of public commenting has ended. Sage is planning on submitting a Scope of Work to the Department for review prior to implementing the sampling.

**1-10** *In addition to the dry cleaning facility, there was also an ARCO station on the corner of Mill and Spring. Landscaping volunteers from Trinity repeatedly cite finding oil and waste contaminants still in the soil after all these years.*

**• How will DEM approach this?**

As previously stated, the Department is not aware of any soil or groundwater sampling or analytical laboratory testing performed on any of the abutting or nearby properties. If sampling was conducted on any property, and a reportable concentration of a contaminant was detected in soil or groundwater, the property owner would be obligated to notify the Department of the reportable release in accordance with Section 5.0 (Notification) of the Remediation Regulations. To date there is currently no documentation of an existing release that falls within the jurisdiction of the Department.

**• Does DEM even have jurisdiction there?**

The Department only has jurisdiction over documented releases of hazardous materials in accordance with the Remediation Regulations. To date there have been no documented releases reported to the Department for any property abutting or nearby the Queen Anne Square Site. Therefore the Department does not currently have jurisdiction under the Remediation Regulations, over any property near the Site. However, because there have been specific allegations of potential contaminated soil existing on the Trinity Church property, the Department will likely recommend in a letter similar to the one that the City of Newport received on November 16, 2011, that Trinity Church conduct an investigation of their property for environmental impacts.

**1-11** *It is our understanding that the DEM will use a new internal procedure when analyzing QAS. Can you comment on this?*

On November 9, 2011, the Department amended the Remediation Regulations, including Rule 7.07.A.iii which indicates:

*“Whenever a site that is known to be contaminated or is suspected of being contaminated based upon its past use is considered for possible reuse as the location of a School, Child-Care Facility, or as a Recreational Facility for Public Use that supports existing or proposed Active Recreation, the person proposing such reuse shall, prior to the establishment of a final scope of investigation for the site and after the completion of All Appropriate Inquiries, hold a public meeting for the purposes of obtaining information about conditions at the site and the environmental history at the site that may be useful in establishing the scope of the investigation of the site and/or establishing the objectives for the environmental clean-up of the site.”*

Because the proposed Queen Anne Square project involves the renovation of “a Recreational Facility for Public Use that supports existing or proposed Active Recreation,”

the requirements of this new rule were triggered and the Public Meeting was held on April 2, 2012.

- 1-12** *For the citizens of Newport, “open spaces”, especially historic ones, is of vital concern. Yet the NRF’s proposal to change QAS will result in an actual reduction in “open space”. Would this be philosophically inconsistent with DEM’s overall mission?*

The Department is charged with the protection of open space under R.I. Gen. Laws § 42-17.9-1, *et seq.* The statute declares (R.I. Gen. Laws § 42-17.9-2) that the purpose of the Preservation of Open Space Act is to “protect and support the public's interests in open space values as a means of preserving the use and the enjoyment of the natural resources of the state, of enhancing environmental quality and functionality, of defining and enhancing the sense of place, of providing recreational opportunities, and of contributing to the quality of life.” As such, it is not an inherent fact that the NRF proposal will result in an actual reduction of open space. Furthermore, the Office of Waste Management’s role is limited to the regulatory oversight of the investigation and remediation of jurisdictional releases of hazardous materials. Within this role, the Department does not have any authority to direct or control the specific use of a property. The Office of Waste Management has a limited role in ensuring that the final remedy is consistent with the desired use of the property, is compliant with the requirements of the Remediation Regulations, and is protective of both human health and the environment.

- 1-13** *Does DEM believe that the scope of the soil testing should be extended beyond the current park perimeters?*

As previously stated, since there is no indication that the Site is impacting its neighbors, or being impacted by its neighbors, the Department will not be requiring the DDMF to expand the investigation beyond the boundary of the subject Site.

- 1-14** *Given that testing is expensive, how will DEM mandate that the city convey to Newport citizens that current efforts have been inadequate and more testing is needed?*

The Queen Anne Square Site is subject to an ongoing investigation under the jurisdiction of the Department. To date, samples of soil and groundwater have been collected from the Site and analyzed by a laboratory in a manner consistent with the environmental assessment approach used at similar types of sites in Rhode Island. During the April 2, 2012, Public Meeting and in subsequent public comments, data gaps in the sampling have been identified which need to be addressed. Therefore, additional investigation for chemicals that were not targeted during the initial phases of the investigation, but which were later identified as potential contaminants of concern (i.e. PCBs), will be included in the revised Scope of Work to be written by Sage and submitted to the Department for review and approval.

- 1-15** *Understanding that this is only speculation on DEM's part, what has been the effect on abutters' property values, in your experience, when home owners realize they're adjacent to a toxic waste site?*

The Department's role is limited to regulatory oversight of the investigation and remediation of jurisdictional releases of hazardous materials. The Department's OWM does not have any specific knowledge or experience with area property values and/or the impact of proximity to a regulated Site, however, the ultimate goal of the regulatory process is to make sure that the final remedy for the Site is compliant with the requirements of the Remediation Regulations and results in a Site that is safe and protective of both human health and the environment.

- 1-16** *Do you have any examples of when a toxic waste site is exposed by DEM's investigations and injured parties (e.g. abutters) sue for damages (e.g. the city)?*

The Department's OWM does not have any examples of the above described scenario.

- 1-17** *If the QAS project were halted immediately, how would DEM classify the site?*

The Queen Anne Square property is considered a hazardous material release site, jurisdictional under the Department's Site Remediation Program, and subject to the requirements of the Remediation Regulations. Since the Site Investigation process is incomplete, if the proposed redevelopment project were to be canceled, the Responsible Party (i.e. the City of Newport as property owner), would be responsible for completing the investigation and implementing a Department approved remedy at the Site.

- 1-18** *Capping toxic sites and/or solid concrete capping have approximately a 50 year life span:*

- *Is there a long range site plan for management and funding for QAS toxic materials?*

If the final Department approved remedy for the Queen Anne Square Site is, as has been tentatively proposed, a combination of engineered control caps installed over the surface of the entire Site, then that remedy would also include the implementation of an institutional control in the form of an Environmental Land Usage Restriction (ELUR) with associated Soil Management Plan (SMP) recorded on the title for the property. The ELUR and SMP would include all of the requirements for managing contaminated soil should disturbance of the cap be required in the future, long-term maintenance of the cap, and a provision for annual inspection of the cap and certification of the cap's integrity with requirements for repairs if deficiencies are noted. An ELUR and an SMP are typical components of remedies at sites where residual contamination is capped in place, and proper long-term maintenance of the engineered control caps is a requirement of maintaining the Site in compliance with the final Letter of Compliance (LOC) issued by the Department, following the conclusion of all required remedial actions.

- *Who is writing the long term site remediation plan ?*

Typically the ELUR and SMP are developed by the Performing Party's environmental consultant. In this case that would likely be Sage on behalf of the DDMF.

- 1-19** *Does the DEM have any examples where public toxic sites in the state have returned to private ownership? What were their maintenance plans, short and long term? And who paid the maintenance? Taxpayers?*

The Department's OWM does not have any examples of the above described scenario.

- 1-20** *Can the city legally "give" a known toxic site to a non profit? A homeowner cannot sell a house if it tests positive for Radon - it's against the law, so - how can the city endanger the public by a site that has far more dangerous chemicals than that.*

It is the Department's understanding that the City of Newport will maintain ownership of the Queen Anne Square Site. Legal questions about the Site should be addressed to the Newport City Solicitor.

- 1-21** *What is the final authority on the legality of giving away toxic land? Did anyone call the EPA? There has to be a law against that. Or if they are going to do it, then some entity has to ensure that the private party (NRF) will protect the public who are going to be using the site. Moreover, who even trusts the NRF?*

As previously indicated, it is the Department's understanding that the City of Newport will maintain ownership of the Queen Anne Square Site.

The Department's OWM has not called the US Environmental Protection Agency (EPA) about this Site.

Legal questions about the Site should be addressed to the Newport City Solicitor.

The final Department approved remedy for the Site must be consistent with the selected usage of the property, compliant with the requirements of the Remediation Regulations, and result in a remediated Site that is safe and protective of both human health and the environment.

- 1-22** *Head gardener at Trinity Church said she found oil in the soil in the southeast corner of the church yard. Gas station had formerly been there. Newport directories list Old State House Service Station located there from 1941 to 1973, so reasonable that petroleum contaminants in Queen Anne Square.*

As previously indicated, the Department is not aware of any soil or groundwater sampling or analytical laboratory testing performed on any of the abutting or nearby Trinity Church properties. However, because there have been specific allegations of



potential contaminated soil existing on the Trinity Church property, the Department will likely recommend in a letter similar to the one that the City of Newport received on November 16, 2011, that Trinity Church conduct an investigation of their property for environmental impacts. To date the groundwater data collected at the Queen Anne Square Site, which appears to be hydraulically downgradient of the Trinity Church property, has not shown evidence of a release of petroleum contaminants migrating onto the Site.

***1-23 & 1-24 ARCO station was torn down in the late 70's but was certain that gas tanks were never removed.***

If there are remaining underground storage tanks (USTs) on the portion of the Trinity Church property that was historically occupied by a gas station, there is potential for remaining petroleum related contamination if the USTs were never completely emptied. To date the groundwater data collected at the Queen Anne Square Site, which appears to be hydraulically downgradient of the Trinity Church property, has not shown evidence of a release of petroleum contaminants migrating onto the Site.

***1-25 Redesign involves parts of the property belonging to Trinity Church, but testing conducted limited only to property owned by City of Newport. At the very least we would expect the DEM to require environmental monitoring for contaminants/petroleum hydrocarbons during any construction phase on Trinity property as well as City property to identify any release potential and exposure to the Public.***

It is the Department's understanding that the redesign is limited to the City of Newport owned Plat 24, Lot 346, which is currently undergoing investigation activities, and the redesign does not include any of the abutting Trinity Church property which was not included in the scope of the environmental assessment activities.

***1-26 Urge DEM officials to proceed in their professional manner without letting the negative atmosphere affect the necessary work to be accomplished. And at the same time, I don't want the opponents' pressure to change the plans already approved and put into place.***

As stated previously, the Department's role is limited to regulatory oversight of the investigation and remediation of jurisdictional releases of hazardous materials. The Department does not have any authority to direct or control the usage of a property, or the proposed redesign plans, and its role is limited to making sure that the final remedy is consistent with the selected usage of the property, compliant with the requirements of the Remediation Regulations, and is protective of both human health and the environment.

***2-1 Boring studies were not taken from several critical areas from above the proposed study area, the eastern most portion of the property and the...defined project site with its neighboring sites which are all within the confines which is commonly known as***

***Queen Anne Square, the entire block area that goes up to Spring Street with all those properties part of it.***

It is the Department's understanding that the proposed redesign is limited to the City of Newport owned Plat 24, Lot 346, which defines the limits of the Queen Anne Square Site. To date there is no evidence that contamination from the Queen Anne Square Site is migrating off site onto adjacent properties, and no evidence that potential contamination from adjacent properties is migrating toward the Queen Anne Square Site. Since there is no indication that the Site is impacting its neighbors, or being impacted by its neighbors, the Department will not be requiring the Performing Party for this project (i.e. the DDMF), to expand the investigation beyond the boundary of the subject Site. However, because there have been specific allegations of potential contaminated soil existing on the Trinity Church property, the Department will likely recommend in a letter similar to the one that the City of Newport received on November 16, 2011, that Trinity Church conduct an investigation of their property for environmental impacts.

**2-2 *Digging performed by NRF to move rose bushes after SAGE sampling, and Petroleum Hydrocarbons were encountered. No digging should have taken place until extent of contamination was defined.***

The Department does not have specific details regarding exactly where this alleged digging took place, but does concur that there should be no disturbance of contaminated soil on the Queen Anne Square Site without prior written Department approval.

**2-4 *Is it a DEM regulation that all construction workers, landscape gardeners, designers, artists, administrators and their staff and other related parties who may be on site be 40 hour trained? If so, how is such implemented?***

The rules and regulations governing safe working conditions fall under the jurisdiction of the Occupational Safety and Health Administration (OSHA), not this Department, and would apply primarily to construction workers and environmental professionals involved with the implementation of the Site remedy. However, once the remedy for the Queen Anne Square Site is completed, and there is an installed barrier preventing exposure to any residual contamination remaining at the Site, any landscape gardeners, designers, artists, administrators and their staff and other related parties who may be on the Site, including members of the Newport community and visiting tourists, will be able to utilize the remediated property without risk as long as the requirements of the ELUR and SMP are adhered to and the remedy is maintained properly.

**2-5 *Do not believe enough testing has been done to make a definitive declaration regarding entire site or the adjacent land area above the current study area.***

It is the Department's understanding that the proposed redesign is limited to the City of Newport owned Plat 24, Lot 346, which defines the limits of the Queen Anne Square Site, and which is currently undergoing investigation activities. To date there is no evidence that

contamination from the defined Queen Anne Square Site is migrating off site onto adjacent properties, and no evidence that potential contamination from adjacent properties is migrating toward the Queen Anne Square Site. Since there is no indication that the Site is impacting its neighbors, or being impacted by its neighbors, the Department will not be requiring the Performing Party for this project (i.e. the DDMF), to expand the investigation beyond the boundary of the subject Site. However, because there have been specific allegations of potential contaminated soil existing on the Trinity Church property, the Department will likely recommend in a letter similar to the one that the City of Newport received on November 16, 2011, that Trinity Church conduct an investigation of their property for environmental impacts.

Under separate cover the Department will be requesting that a draft Scope of Work for the additional investigation activities described in the report, be submitted for Department review and approval.

If you have any questions regarding this letter, please contact me by telephone at (401) 222-2797 extension 7109 or by e-mail at [joseph.martella@dem.ri.gov](mailto:joseph.martella@dem.ri.gov).

Sincerely,



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