

November 2, 2011

Honorable Marc R. Pacheco, Senate Chair
Honorable Anne M. Gobi, House Chair
Joint Committee on Environment, Natural Resources, and Agriculture
State House, Room 473F
Boston, MA 02133

Subject: Support for S. 340, An Act to Revitalize Urban Centers

Dear Chairman Pacheco and Madam Chair Gobi:

The LSP Association (LSPA) is the non-profit, professional society for Licensed Site Professionals (LSPs, who are licensed by the Commonwealth), and other hazardous waste site cleanup professionals (attorneys, laboratory personnel, contractors, etc.) involved in the management of hazardous waste sites in Massachusetts. Through education and information, we work to support our nearly 1,000 members to achieve and maintain high standards of practice in overseeing the assessment and remediation of hazardous waste disposal sites.

The LSPA writes to express its support of **S. 340, "An Act to Revitalize Urban Centers."** This bill provides important modifications to MGL Chapter 21E, particularly with respect to the definition of Background, that will facilitate the redevelopment of urban lands, while also ensuring the protection of health, safety, public welfare, and the environment. This letter summarizes our reasons for supporting the bill; it also suggests several specific modifications that we believe will clarify the intent of the bill and refine specific definitions.

"Background" is an integral concept in MGL Chapter 21E, and involves the assumption that an owner of a site should not be required to assess and potentially mitigate materials at the site that are ubiquitous and occur over a wide area (i.e., a broader area than the individual property), and that are not related to a "release" at the site. This concept has already been incorporated into the existing statute and regulations, most notably with respect to metals in soil, certain concentrations of which occur naturally or as the result of specific historical anthropogenic activities (e.g., arsenic related to regional historical use of pesticides, and lead present due to properly-applied paint or to historical auto emissions). MassDEP has defined certain concentrations of metals in soil as being Background typical of Massachusetts soils, even though it is acknowledged that concentrations at a given location are likely to vary, sometimes significantly, from that defined concentration. Existing statute and regulations already exempt site owners from investigating such Background concentrations of metals.

Regulations relating to MGL Chapter 21E are contained in the Massachusetts Contingency Plan (MCP; 310 CMR 40.0000). Under current statute and regulation, MCP compliance at many urban sites proposed for redevelopment is slow and arduous due to the presence of chemical constituents that are

an inherent component of old (18th, 19th, and early/mid 20th century) fill. This fill is often ubiquitous and consistently present over wide areas, and may not even be related to historic releases that occurred at the current location of the fill. However, because these constituents are not attributable to “geological or ecological conditions,” they are currently excluded from the statutory definition of Background. Section 1 of S. 340 acknowledges that certain concentrations of these constituents, when identified in material identified as widespread historic urban fill (in the language of the bill, “ubiquitous and consistently present in the environment at and in the vicinity of the disposal site of concern”), represent Background, and should be recognized as such regardless of whether they are the result of anthropogenic, ecological, or geological factors.

The bill also addresses the issue of Background in the context of indoor air quality. Given the widespread use of chemicals in typical households, in paints, building materials, rugs, furniture, plastics, aerosols, coatings, etc., there will be certain chemical concentrations associated with these products present in the air of a typical household (“typical residential indoor air concentrations”). Since such concentrations of these materials are also commonly present, and also are not the result of a release to the environment, Section 1 of this bill further provides that concentrations defined as those “typically found in indoor air in residences” should also be defined as Background.

Section 2 of the bill is intended to specifically define the types of soils and fill material that would represent Background because they are considered widespread and likely to contain components that are regulated, but that are not present as the result of a specific release. Section 3 is intended to clarify that the historical placement of fill should not be defined as a release. Section 4 is analogous to Section 2, in defining the types of indoor air concentrations that would be defined as Background. Neither Section 2 nor Section 4 addresses the specific materials or concentrations that would represent Background, because Section 5 of the bill stipulates that MassDEP is to establish these parameters by regulation within 90 days of the effective date of this bill. Finally, Section 6 of this bill clarifies that at sites where conditions require the implementation of a remedial measure or measures, such measure(s) must achieve “Background” conditions.

While we support the bill, the LSP Association suggests that greater clarity could be attained by revising certain phrasing of the bill, as described below:

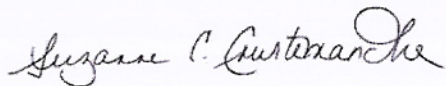
- Section 1, Line 12 and Section 4, line 35: “typical” to be replaced with “characteristic,” or another word indicating a concentration generally found to occur in residential indoor air, to avoid the implication that the “characteristic” concentrations are *necessarily* the same as the “Typical Indoor Air Concentrations” (TIACs) already developed by MassDEP. The LSPA is not implying, by this suggestion, that the TIACs are not suitable for use as “characteristic” concentrations; only that the two terms should not be confused. Also, it is assumed that the characteristic concentrations will be determined in the same way as those used to define Historical Fill.
- Section 2, Line 17 and 18: “MGL c. 21E” to be deleted and replaced with “*the Solid Waste Site Assignment regulations of 1972.*”
- Section 2, Line 18: “arithmetic” to be replaced with “representative.” Arithmetic means are often not representative of soil data sets, which are frequently skewed or non-normal. The method of determining a representative mean should be selected based on the sample size and variability.

- Section 2, Line 19: *"Fill that was emplaced in non-compliance with applicable regulations in effect at the time does not meet the definition of Historic Fill."* to be inserted at the end of this Section.
- Section 3, Line 31: *", or resulting from the presence of household goods."* to be inserted following "labeling." Some of the volatile compounds typically identified in indoor air emanate from materials present in the household, such as (but not restricted to) furniture, rugs, insulation, and building materials (collectively, *"household goods"*), for which there are no labels dictating usage. It is appropriate that volatile compounds from these *"household goods"* also be incorporated into the exemption from the definition of a "Release."
- Section 6, line 46: *"..a level representing.."* to be inserted following "the release to...."

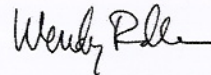
We urge you to support S. 340, and to seriously consider our recommended revisions to the existing language. The LSPA believes these revisions will strengthen and clarify the intent of the bill to expedite the investigation and remediation activities at urban sites around the state containing historical fill, and that passage of the bill will promote the growth of jobs and tax revenue, while continuing to ensure the protection of health, safety, public welfare, and the environment.

If the LSPA can provide any additional information, please contact us. Thank you for your attention.

Sincerely,



Suzanne Courtemanche, President



Wendy Rundle, Executive Director

CC: Senator Harriette Chandler, Worcester