



RHODE ISLAND

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

235 Promenade Street, Providence, RI 02908-5767

TDD 401-222-4462

November 16, 2011

Mr. Edward F. Lavallee  
City Manager  
City Hall  
43 Broadway  
Newport, Rhode Island 02840

Mr. Stephen C. Waluk  
City Council Chairman/Mayor  
19 Middleton Avenue  
Newport, Rhode Island 02840

RE: Queen Anne Square, between Thames Street and Trinity Church, Newport, Rhode Island

Dear Mr. Lavallee and Mr. Waluk:

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.

On November 3, 2011, the Department received a telephone call from a concerned citizen regarding the City of Newport's (the City's) proposed plans to redevelop a portion of Queen Anne Square located between Thames Street and Trinity Church. The caller alleged that prior to the Square's development in the mid 1970s, a drycleaner operated on the property. The caller recalled visiting a relative's home near the property and observing drums of what he identified as toxic chemicals outside the drycleaner's building. He also alleged that when the Square was developed, soil contaminated with dry cleaning chemicals was left in place and covered over. Based on the Department's experience with dry cleaners throughout the state, it is not uncommon to find contamination in the environment in the vicinity of dry cleaners.

While the Department does not have a file on the subject site, an inquiry of Department staff working during the time period of the alleged release corroborated what the concerned citizen had said regarding the former presence of a drycleaner at the site, the discovery of cleaning solvents in site soil, and the encapsulation of contaminated soils under the proposed park.

The dual purpose of this letter is to inform you of the concerns raised regarding the City's property, and to inquire if there is anyone currently working for the City with knowledge of the

history of the property, or any available information resulting from the performance of a due diligence investigation to evaluate the environmental quality of the site. If the property had been used for disposal of toxic chemicals in the past (whether intentional or unintentional), there may still be chemicals present in the ground and groundwater. Depending upon the nature and current concentrations of those chemicals, should they exist, there may be potential for exposures to users of the property, as well as construction or maintenance workers. An additional consideration is that any regulated material (e.g. contaminated soil) that is disturbed, must be managed in a manner consistent with the Department's Remediation Regulations. Section 5.00 of the Remediation Regulations outlines Notification requirements.

If at this time, the environmental quality of the soil and/or groundwater at the property has not been evaluated, the Department strongly recommends that an environmental assessment of the property be performed before proceeding with any further development plans. In addition, the requirements of 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*, may be applicable to the development of the property. A copy of this section of the RIGL, has been attached for your reference.

If you have any questions regarding this letter or would like the opportunity to meet with Department personnel to share information about the history of the property, or to discuss the City's plans to evaluate or assess the property, 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,



Joseph T. Martella II  
Senior Engineer  
Rhode Island DEM  
Office of Waste Management

Cc: Kelly J. Owens, RIDEM/OWM  
Paige R. Bronk, Newport Planning, Zoning, Development & Inspections Director  
Susan F. Cooper, Newport Recreation Director  
Joseph J. Nicholson, Jr., Esquire, Newport City Solicitor

# TITLE 23

## Health and Safety

### CHAPTER 23-19.14

#### Industrial Property Remediation and Reuse Act

##### SECTION 23-19.14-5

**§ 23-19.14-5 Environmental equity and public participation.** – (a) The department of environmental management shall consider the effects that clean-ups would have on the populations surrounding each site and shall consider the issues of environmental equity for low income and racial minority populations. The department of environmental management will develop and implement a process to ensure community involvement throughout the investigation and remediation of contaminated sites. That process shall include, but not be limited to, the following components:

- (1) Notification to abutting residents when a work plan for a site investigation is proposed;
- (2) Adequate availability of all public records concerning the investigation and clean-up of the site, including, where necessary, the establishment of informational repositories in the impacted community; and
- (3) Notification to abutting residents, and other interested parties, when the investigation of the site is deemed complete by the department of environmental management.
- (4) 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, 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. The public meeting shall be held in a city or town in which the site is located; public notice shall be given of the meeting at least ten (10) business days prior to the meeting; and following the meeting, the record of the meeting shall be open for a period of not less than ten (10) and not more than twenty (20) business days for the receipt of public comment. The results of all appropriate inquiries, analysis and the public meeting, including the comment period, shall be documented in a written report submitted to the department.

(ii) No work (remediation or construction), shall be permitted at the property until the public meeting and comment period regarding the site's proposed reuse has closed except where the director determines that such work is necessary to mitigate or prevent:

- (A) an imminent threat to human health, public safety or the environment; or
- (B) off-site migration of known or suspected contamination.

(iii) The public notice, meeting and comment required by this section shall be in addition to any other requirements for public notice and comment relating to the investigation or remedy of the site and may be made part of another meeting pertaining to the site provided that the minimum standards established by this section for notice and comment are met. Any investigation or remediation undertaken prior to the completion of the public comment period shall be limited to measures necessary to define and/or mitigate the imminent threat

and/or off-site migration.

(iv) The director shall establish, by regulation, standards and practice, which are consistent with federal practices, for purposes of satisfying the requirement to carry out all appropriate inquiries for the purposes of this chapter, the standard for the reporting of the results of those inquiries, and the process for notification to the public of the public meeting, the standards and practices for conducting the public meeting, and reporting on public comment.

(b) Effective until January 1, 2007, the community involvement process may be coordinated, as appropriate, with the public notice and comment opportunity provided in § 23-19.14-11.

(c) The department of environmental management will develop and implement a process by which a person that is or may be affected by a release or threatened release of a hazardous material at a site located in the community in which the person works or resides may request the conduct of a site assessment; and a decision process, with objective criteria, specifying how the department will consider and appropriately respond to such requests.

(d) The department of environmental management will maintain, update not less than annually, and make available to the public a record of sites, by name and location, at which remedial actions have been completed in the previous year and are planned to be addressed under the state site remediation and Brownfields program in the upcoming year. The public record shall identify whether or not the site, on completion of the remedial action, will be suitable for unrestricted use and, if not, shall identify the institutional controls relied on in the remedy.