

**Record of Decision**  
**Bristol-Myers Squibb (ER Squibb & Sons, LLC.)**  
**Cryogenics Facility Expansion**  
**38 Jackson Road (9-4-200)**  
**Devens (Harvard), MA**  
**Unified Permit**  
**April 30, 2019**

**1. Applicant:**

The Applicant is Bristol-Myers Squibb Company (BMS) and landowner ER Squibb & Sons, LLC., 38 Jackson Road, Devens (Harvard), MA 01434 (Deed Reference: Bk 40684 pg. 172).

**2. Premises and Proposed Project:**

BMS is seeking a Unified Permit for site plan approval for the proposed construction of a +/- 13,000 gross-square foot building addition and associated site improvements to their existing Chemical Storage/Cryogenics building. Construction includes associated utility, grading, drainage, and lighting improvements. The project is located within the Innovation and Technology Business District, Viewshed Overlay District and Watershed Water Resources Protection Overlay District.

**3. Submission:**

The following is a list of exhibits included as part of the record for this Application:

1. Unified Permit Application Package- Level 2 (D19-017) entitled: "Bristol-Myers Squibb Devens Facility: Cryogenics Facility Expansion, Devens, MA", prepared by Vanasee Hangen Brustlin, Inc., 101 Walnut Street, Watertown, MA 02471; dated March 2019, received by the DEC on March 15, 2019,
2. Building Permit Calculation: Cryo Storage Expansion (1 sheet), by AZ Corp and Bristol-Myers Squibb, received March 21, 2019.
3. Site Plan set entitled "BMS Devens Cryogenic Building Expansion"; prepared by Vanasee Hangen Brustlin, Inc., 101 Walnut Street, Watertown, MA 02471; for Bristol-Myers Squibb Company, 38 Jackson Road, Devens, MA 01434; dated March 14, 2019 including the following sheets:
  - S134-10C-001 Legend and General Notes;
  - S134-10C-003 Updated Campus Site Plan;
  - S134-10C-100 Layout and Materials
  - S134-10C-200 Grading and Drainage
  - S134-10C-300 Utility Plan
  - S134-10C-500 Erosion, Sedimentation Control and Tree Protection Plan
  - S134-10C-600 Site Details
  - S134-10C-601 Site Details
  - S134-10C-700 Existing Conditions Plan
4. Determination of Completeness dated March 26, 2019.
5. Public Hearing Notice Memo to Town Clerks of Ayer, Harvard, Shirley, Lancaster and MassDevelopment, from Peter Lowitt, dated April 5, 2019;
6. Public Hearing Legal Notice Fax to Nashoba Publications, from Peter Lowitt, dated April 1, 2019 – to be published April 5 and 12, 2019.
7. Copies of Legal notices from April 5 and 12, 2019 from Nashoba Publications.
8. Public Hearing Notice emailed to Community Service Cable Committee, from Peter Lowitt/Kate Clisham, dated April 5, 2019;

9. Memo dated March 26, 2019 from Peter Lowitt to Towns of Ayer, Harvard and Shirley Board of Selectman and Planning Offices; Subject: Level 2 Unified Permit Application – BMS 38 Jackson Road (notification of Public Hearing on April 30, 2019 at 6:45PM, including certified mail return receipts);
10. Memo dated April 5, 2019 from Peter Lowitt to Abutters and Interested Parties; Subject: Level 2 Unified Permit Application – BMS 38 Jackson Road (including certified mail return receipts);
11. Public Hearing Notice to Secretary of State, from Peter Lowitt, dated April 5, 2019;
12. Plan Circulation Memo to MassDevelopment from Neil Angus; Re: BMS – Unified Permit Amendment Request – Plan Circulation; dated March 29, 2019.
13. Certified List of Abutters for 38 Jackson Road; from Devens Board of Assessors, dated March 1, 2019;
14. Plan review comment letter from Neil Angus to Curtis Quitzau, re: BMS Level II Unified Permit Application for Cryogenics Facility Expansion (#D19-017); dated April 5, 2019;
15. VHB Response to Review Comments 4-5-19\_DEC RESPONSES\_2, dated April 19, 2019
16. Lithonia Lighting Fixture Detail Cut Sheet
17. Revised Site Plan set entitled “BMS Devens Cryogenic Building Expansion”; prepared by Vanasee Hangen Brustlin, Inc., 101 Walnut Street, Watertown , MA 02471 for Bristol-Myers Squibb Company, 38 Jackson Road, Devens, MA 01434; dated April 18, 2019 including the following sheets:
  - S134-10C-001 Legend and General Notes;
  - S134-10C-003 Updated Campus Site Plan;
  - S134-10C-100 Layout and Materials
  - S134-10C-200 Grading and Drainage
  - S134-10C-300 Utility Plan
  - S134-10C-500 Erosion, Sedimentation Control and Tree Protection Plan
  - S134-10C-600 Site Details
  - S134-10C-601 Site Details
  - S134-20E-000 Exterior Elevations
  - S134-10C-700 Existing Conditions Plan
18. Peer Review Engineering Letter from Scot Turner, Nitsch Engineering, dated April 8, 2019 (1 page), Re: Nitsch Project #9419 BMS Cryogenics Expansion Site Plan Review Comments.
19. Plan entitled: “Site Lighting Photometric Plan Addition Devens Cryogenic Facility”; prepared by Vanasee Hangen Brustlin, Inc., 101 Walnut Street, Watertown , MA 02471 and Stantec for Bristol-Myers Squibb Company, 38 Jackson Road, Devens, MA 01434; dated April 23, 2019 (drawing # 134-20X-000)
20. Email correspondence as follows:

Date	From	To	Subject
3/21/19	Deven Chauhan	Neil Angus	RE BMS Cryogenic Building Expansion - Application for Level 2 Unified permit
3/14/19	Ed Starzec	Curt Quitzau	BMS Devens - Cryogenics Building Expansion
3/14/19	Curt Quitzau	Neil Angus	BMS Cryogenic Building Expansion - Application for Level 2 Unified permit
3/12/19	Peter Lowitt	Curt Quitzau	RE External RE BMS Cryogenics Building Expansion
3/11/19	Curt Quitzau	Peter Lowitt	BMS Cryogenics Building Expansion
3/11/19	Peter Lowitt	Curt Quitzau	Re BMS Cryogenics Building Expansion
4/5/19	Ed Starzec	Neil Angus	Re Design Review Letters
4/5/19	Scott Turner	Neil Angus	RE BMS Cryogenics Project
4/8/19	Scott Turner	Neil Angus	BMS letter
4/24/19	Curt Quitzau	Neil Angus	RE External RE BMS Cryogenics Building Expansion - Final responses to comments

4/18/19	Neil Angus	Curt Quitzau	RE BMS Cryogenics Building Expansion - Draft responses to comments
4/19/19	Curt Quitzau	Neil Angus	RE External RE BMS Cryogenics Building Expansion - Final responses to comments (1)
4/8/19	Neil Angus	Curt Quitzau	Design review letter for BMS Cryogenics expansion
4/5/19	Neil Angus	Curt Quitzau	BMS Cryogenics Expansion
4/1/19	Deven Chauhan	Neil Angus	RE Emailing DOC BMS Cryogenics Expansion 2019 signed
4/5/19	Neil Angus	Scott Turner	RE BMS Cryogenics Project (5)
4/5/19	Scott Turner	Neil Angus	RE BMS Cryogenics Project (4)
4/5/19	Neil Angus	Scott Turner	RE BMS Cryogenics Project (3)
4/5/19	Scott Turner	Neil Angus	RE BMS Cryogenics Project (2)
3/29/19	Curt Quitzau	Neil Angus	RE External Emailing DOC BMS Cryogenics Expansion 2019 signed
4/1/19	Neil Angus	Deven Chauhan	FW Emailing DOC BMS Cryogenics Expansion 2019 signed
3/27/19	Scott Turner	Neil Angus	RE BMS Cryogenics Project (8)
3/29/19	Neil Angus	Chief leBlanc	RE 64 Jackson Unified Permit
3/29/19	Neil Angus	John Marc-Aurele	RE 64 Jackson Unified Permit(7)
3/29/19	Neil Angus	Curt Quitzau	Emailing DOC BMS Cryogenics Expansion 2019 signed
3/27/19	Neil Angus	Scott Turner	BMS Cryogenics Project
3/20/19	Neil Angus	Curt Quitzau	RE BMS Cryogenic Building Expansion - Application for Level 2 Unified permit (13)
3/20/19	Deven Chauhan	Neil Angus	RE BMS Cryogenic Building Expansion - Application for Level 2 Unified permit (12)
3/21/19	Neil Angus	Deven Chauhan	Re BMS Cryogenic Building Expansion - Application for Level 2 Unified permit (11)
3/21/19	Neil Angus	Kate Clisham	Re BMS Cryogenic Building Expansion - Application for Level 2 Unified permit (10)
3/26/19	Neil Angus	Deven Chauhan	RE BMS Cryogenic Building Expansion - Application for Level 2 Unified permit (9)
3/21/19	Neil Angus	Kate Clisham	Fwd BMS Cryogenic Building Expansion - Application for Level 2 Unified permit

21. Staff Report dated 4-26-19 Re: Level 2 Unified Permit- BMS Cryogenics Expansion – Unified Permit Review, prepared by Neil Angus and Peter Lowitt (4 pages);
22. BMS Cryogenics Facility Expansion Record of Decision Draft, dated April 30, 2019 (6 pages).
23. VHB, Inc. Presentation at DEC Public Hearing (DEC CryoX Presentation 4-30-2019).

**4. Unified Permit Components and Actions:**

The Unified Permit components include site plan approval for the proposed construction of a +/- 13,000 gross-square foot building addition and associated site improvements to their existing Chemical Storage/Cryogenics building on an existing +/- 89 acre parcel (9-4-200) at 38 Jackson Road.

**5. Process:**

The application was submitted on March 15, 2019 and the Determination of Completeness was issued on March 26, 2019. Copies of the application were received by the surrounding Towns on March 26, 2019. Legal notices were placed in Nashoba Publications on April 5 and 12, 2019. All abutting property owners were duly notified by certified mail. The 30-day Town comment period expired on April 26, 2019 and no town or public comments were received. The public hearing opened on April 30, 2019 and the Commission closed the public hearing and voted on the record of decision the same night.

**6. Waivers**

The Applicant requested the following waiver from the Commission:

**974 CMR 3.04 (6)(a)3f - Site Improvements --Lighting** - to allow lights to be illuminated during night operations for staff safety. As under Phase 1 and Phase 2, the operation of the Project will be 7 days a week, 24 hours a day with a reduced staff on weekends.

The Commission voted all in favor to grant this waiver request.

**7. Findings**

The DEC made the following findings:

1. The proposed use (cryogenics warehouse/storage) is consistent with the development goals and permitted uses within the Innovation and Technology Business (ITB) District and the requirements of the Watershed Water Resources Protection District.
2. The project as proposed is consistent with the Viewshed Overlay Protection District as set forth in the by-laws and rules and regulations.
3. The preexisting lot and building have more than 100 feet of frontage on Jackson Road and the lot is well over 2 acres in area and is therefore in compliance with the minimum lot requirements as per the Devens Bylaws.
4. The facility operates 24 hours a day, 7 days a week and therefore, requires lighting between 11:00PM and 7:00AM for facility operations. Past waivers for lower site lighting intensities will minimize the amount of light pollution created by this project.
5. Regarding the approval criteria listed in 974 CMR 3.03(2):
  - (a) The Site Plan, with conditions and waivers, complies with 974 CMR 3.00 and with the applicable provisions of the By-Laws.
  - (b) The development lies on a lot that is recorded at the Registry of Deeds;
  - (c) The application is Complete.
  - (d) All drives, parking lots, loading areas, paths, sidewalks, and streets are designed to provide for safe vehicular and pedestrian travel.
  - (e) Access and site circulation will enable prompt fire, police, and emergency response.
  - (f) Adequate capture, treatment, infiltration and discharge of stormwater and surface water runoff and compliance with applicable portions of the "Devens Stormwater Pollution Prevention Plan", has been included in the design.
  - (g) Connections with Devens utility, power and communication systems exist and no new connections are proposed.
  - (h) Facilities required under the Water Resources Protection Bylaw and the DEC Stormwater Design Standards have been included.
  - (i) The plans are in compliance with the Landscaping Design Standards for plant materials, planting strips, screening, and preservation of existing specimen trees and wooded areas.
  - (j) A Wetlands Order of Conditions is not required for this project.
  - (k) Industrial Performance Standards will be adhered to as per the final plans.
  - (l) Sufficient parking for current needs is being provided.
  - (m) Existing traffic control measures are adequate for this project.
  - (n) The proposed development will participate in the Devens Traffic Management Association.

- (o) Adequate water supply exists in terms of quantity, quality, and water pressure for domestic needs and fire protection.
- (p) Connection to sanitary sewers has been authorized by Devens Utilities.
- (q) Existing building design meets the minimum standards as established by Mass Development for the district in which the lot is located.
- (r) Soil testing indicates that the soils are capable of supporting the proposed development;
- (s) The development has been designed with due consideration for public health;
- (t) Adequate climate change mitigation, adaptation and greenhouse gas emission mitigation measures have been incorporated in accordance with 974 CMR 4.11

**8. Conditions:**

The DEC voted to impose the following conditions:

1. Wherever "Applicant" is referenced in the Conditions set forth herein, it refers to the Applicant, its successors and assigns. Wherever "DEC" is referenced, it shall refer to the Devens Enterprise Commission, its successors and assigns.
2. Jackson Gate from Route Two shall be the primary means of truck access to and from the site on a permanent basis, with other gates to be used only in emergency situations or during protracted construction when the Jackson gate is unavailable. The Applicant shall post signs that all trucks must enter and exit Devens via the Jackson Gate at Route 2 on the exit gate of the facility.
3. In accordance with the Devens By-Laws, Article III, Section K 1. a., no soil, loam, sand, gravel, or other earth materials shall be permanently removed from any lot within Devens, except in accordance with the Devens Soil Management Policy and approval from the DEC.
4. Prior to commencing any intrusive earth work within Devens (due diligence, construction of otherwise) all personnel to be on site shall view an Unexploded Ordinance/Munitions of Explosive Concern (UXO/MEC) video briefing provided by the Devens Fire Department.
5. Once the appeal period has expired, the Applicant shall submit final approved plans to the DEC for endorsement. Sheet Index shall be revised to reflect only plans being recorded. The Applicant shall file the endorsed plans and the final Record of Decision with the Registry of Deeds and proof of recordation shall be submitted to the DEC prior to commencement of construction.
6. All applicable federal, state, and local permits necessary for the construction and operation of the facility (including, but not limited to a NPDES Construction General Permit) must be obtained prior to the issuance of a Certificate of Occupancy. Copies of permits issued by those other than the DEC must be filed with the DEC.
7. Prior to issuance of a Certificate of Occupancy, the Applicant shall provide updated As-Built Plans and accompanying information for all approved site improvements in accordance with the DEC As Built Policy.

8. The BMS Operations and Maintenance Plan for the campus shall be updated to include the new Cryogenics facility expansion and the proper handling and containment of drug substances and hazardous materials. A copy of the updated portion of the plan shall be provided to the DEC prior to issuance of a Certificate of Occupancy. Annual stormwater operations and maintenance reporting forms that are submitted to the DEC shall also be updated to include these new areas.
9. Prior to commencement of construction, all erosion controls shall be installed. Contact DEC staff for inspection.

**9. Decision:**

The public hearing closed on April 30, 2019. The DEC voted on April 30, 2019, to grant the waiver requested, to issue findings, including that the application complied with Approval Criteria in 974 CMR 3.03(2), to impose conditions, and to approve the site development plan for the Cryogenics facility expansion at BMS, located at 38 Jackson Road, Devens, MA (9-4-200).

**10. Building Permit**

The Building Commissioner, along with the Electrical and Plumbing Inspectors, must review architectural/structural drawings and specifications and approve them in writing, prior to issuance of a building permit. All requirements in the Massachusetts Building Code, the Massachusetts Sanitary Code, and those of the Devens Fire Chief shall be met. When these approvals are obtained, the building permit may then be integrated with this Site Plan Record of Decision. Together they will constitute the Unified Permit for the Cryogenics facility expansion at BMS (38 Jackson Road), which will in turn allow construction to commence.

**11. Permit Duration**

In accordance with 974 CMR 1.10, unified permits shall remain in effect so long as the approved activities are commenced within six months of the date of the DEC or the LUA produces a written decision and completed within two years. It is further noted that a thirty-day "reconsideration period" during which an applicant, a Town, or an aggrieved person may request the DEC reconsider its action (By-Laws, Article IV, Sections C through F). Work performed during this period, which begins on May 1, 2019 and terminates May 31, 2019, is "at risk". Final plans must be submitted for endorsement by the Commission by October 30, 2019.

Approved by:

Date: 5-1-19


  
 Peter C. Lowitt, FAICP, Director  
 Devens Enterprise Commission

*Certification*

*Middlesex, SS*

I certify the above is a true action and record of the Devens Enterprise Commission and that Peter C. Lowitt, Devens Land Use Administrator/Director, is empowered by the Devens Enterprise Commission to sign this Record of Decision on its behalf.

Date: 5/1/2019

  
 Kathryn Clisham, Notary  
 My Commission expires 2/28/2025

