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ATTORNEY-CLIENT/ATTORNEY WORK PRODUCT PRIVILEGED MATTER

TO: Devens Enterprise Commission (DEC)
Neil Angus, Director/Land Use Administrator
FROM: James B. Lampke, Esq., Legal Counsel
RE: January 6, 2026 Hearing on Minor Modification of
Site Assignment and Unified Permit
DATE: January 2, 2026
PAGES: 4 (Including this first page)

A Happy and Healthy New Year to All!

I am writing this memo to provide you with some further information concerning the hearing before you scheduled for Tuesday, January 6, 2026 at 6:00 p.m. As you know, the hearing is on the request of Devens Recycling Center, LLC (DRC) for a minor modification of its Site Assignment and Unified Permit. Under the law hearings of this nature on site assignments and modifications are handled by the local Board of Health, which in this instance is the Devens Enterprise Commission acting as the Board of Health. You also act on permit applications and modifications of the same under Devens laws.

Given the limited changes sought by the Applicant and the fact that the site has already been determined to be suitable, DEP does not act first on the modification request- DEC as the local Board of Health acts on it.

In the interest of efficiency and cost considerations, we have combined the modification of the Site Assignment and modification of the Unified Permit into one hearing. Basically, depending on the changes to the Site Assignment, the Unified Permit would need to be similarly modified.

While the DEC is no doubt familiar with holding hearings, this particular hearing is a bit different than others as the portion related to the Site Assignment of DRC is more regulated by state law and the Code of Massachusetts Regulations, including the DEC's regulations on Site Assignments, and as relates to the Unified Permit under the Devens' Bylaws.

As you know, DRC has an existing Site Assignment issued several years ago and modified. In addition, it has a Unified Permit under that process from the DEC. The matter before you concerns a request of DRC to modify its existing Site Assignment and Unified Permit to:

- Extend the current 7:00 am to 5:00 pm Monday through Friday waste acceptance hours to 5:00 am to 9:00 pm Monday through Friday.
- Allow internal processing of waste materials and equipment maintenance within the confines of the building until 12:00 am Monday through Saturday.
- Allow internal facility maintenance (doors closed condition) 24 hours per day Monday through Saturday to perform ongoing maintenance, when necessary

You have already been supplied with the Application packet. Since then Pre-Filed Direct Testimony and Supplemental Pre-Filed Direct Testimony has been filed and posted from the DRC's engineers and the DEC's peer reviewers and Neil. We will send to you later today the Pre-Filed and Supplemental Pre-Filed Testimony that we have received over the past few days. It is not as long as the Application.

Under state law a Hearing Officer (HO) is appointed by the DEC to conduct the hearing. John F. Shea, Esq. has been appointed. He is very familiar with Site Assignments and was involved as the HO in prior Site Assignment at Devens. He has been working with Neil and I on the hearing issues. As HO, he essentially acts as a Judge or Moderator. He runs the hearing procedurally in accordance with the legal requirements. He rules on procedural matters and is to ensure that there is a full and fair hearing. He will also explain the hearing process and the roles of the participants.

While in hearings usually before you the DEC runs the hearing and makes the final decision, in this type of a hearing the DEC essentially acts like a jury. The DEC hears the evidence and makes after the conclusion of the hearing (usually at another DEC meeting) the decision of whether to approve or deny the minor modifications of the Site Assignment and the Unified Permit. A decision needs to be supported by the evidence presented at the hearing. Neil and I, along with the experts engaged by the DEC and others, will prepare a formal decision for adoption by the DEC based upon your decision to grant or not grant the modifications and any conditions you impose. As with other decisions of the DEC, that decision is appealable to Superior Court and will ultimately be recorded at the Registry of Deeds and run with the land and operation of the site.

While the HO runs the hearing and rules on procedural issues, etc., the DEC can ask questions of any of the witnesses. Usually the DEC's peer reviewers, Neil and I will be asking questions, etc. but you are also given the opportunity to ask questions. The HO may ask questions if he desires. The engineers and representatives of DRC can also ask questions. If any citizens have requested permission to participate, they can usually ask questions if the HO. has approved their participation. Sometimes the HO might allow citizens to make statements even if they did not follow the formal procedure for citizens to participate.

Under a hearing of this nature, Pre-Filed Direct Testimony and Supplemental Pre-Filed Direct Testimony is filed on behalf of the applicant and the DEC. With Pre-Filed Direct and Supplemental Testimony, those documents are introduced as the direct testimony of the witnesses (Applicant's and DEC) and they do not provide direct testimony in the usual manner. Their Pre-Filed Testimony becomes their testimony as if they had so testified.

Once the Direct Testimony of a witness is filed and made part of the record by the HO, the other side can ask questions of that witness, in the usual manner and the representatives of

each party can ask questions. As noted above, the DEC members can also ask questions. You can also speak with Neil and I during the hearing (usually when there is a recess) and you can of course request the HO to have a recess so you can do that.

The issues/requests listed above are rather limited, which will work to make the hearing process more focused and efficient. It will not be as involved as an original Site Assignment or Unified Permit hearing, but is of course still important to the Applicant and the DEC. You cannot revisit in this hearing issues/conditions/terms related to the current Site Assignment and Unified Permit but can of course address issues related to the modifications that the Applicant seeks. You can also assess the credibility of the Applicant, witnesses and representations of the Applicant based on past representations and performance. If there are matters that are not in compliance with the current Site Assignment and Unified Permit, they can be addressed in a separate proceedings. Your decision will be clear that the DEC is reserving all of its rights and none are waived.

As relates to the modification of the Site Assignment, the DEC is to decide whether the changes sought continue to make the site and operations suitable for the Solid Waste Handling Facility. The site and operations have already been generally deemed suitable by the prior review, hearings and decisions of the DEC and DEP.

The law requires the DEC to hold a hearing on the minor modification in accordance with the CMR requirements for minor modification of a site assignment. Similarly, to amend the conditions under the Unified Permit the DEC must hold a hearing.

Generally, the DEC is to make findings in its decision that the operation with the modifications sought do or do not present a danger to the public health or safety or the environment. More specifically, under the law, DEC needs to find, among other things, that the modifications do not adversely affect the present location and operation in terms of:

- (1) the location, nature and extent of any existing or potential sources of public or private drinking water supplies in relation to the site, including the recharge area of a sole source aquifer;
- (2) the relationship of the site to groundwater elevations;
- (3) the proximity of wetlands, as defined in section forty of chapter one hundred and thirty-one;
- (4) the proximity of surface water bodies;
- (5) the proximity of flood plains;
- (6) the nature and extent of residential areas in proximity to the site;
- (7) the availability and suitability of access roads to the site;
- (8) whether areas adjacent to the proposed site have been previously used for solid waste disposal;
- (9) the potential for adverse impact on air quality;
- (10) the potential for creation of a nuisance from noise, windblown litter, or the proliferation of rodents, flies or other vermin;
- (11) the potential for the adverse public health and safety impacts;

- (12) the potential impact on agricultural uses;
- (13) the potential adverse impact on wildlife or on wildlife habitat;
- (14) the potential impact of increased traffic volume on roads to the site;
- (15) the extent to which existing solid waste disposal facilities are located within a municipality. Site assignments for new facilities are preferred in municipalities without existing facilities;
- (16) the extent to which the solid waste disposal needs of the municipality in which the site is sought are met as a member of a regional refuse disposal district. Site assignments in municipalities not participating in regional refuse disposal districts are preferred.
- (17) the potential adverse impacts on communities within one-half mile of the proposed site including the potential adverse impacts on the considerations stated within this section for which site suitability standards and criteria are established.

Given the limited topics of the modification being sought, several of the above are not applicable to this matter.

As with any decision, key considerations are the relation between the operation of the facility in terms of the health, public safety and the environment.

To avoid any Open Meeting Law issues, you should be careful not to discuss among your fellow DEC members outside of the hearing or a meeting this or any of the issues involved. Discussions with staff (including myself) is of course permitted.

I hope that this memo provides some guidance and assistance to you in this matter. If you have any questions or concerns or wish to discuss it, please do not hesitate to contact Neil or me. I can best be reached on my cell at 617-285-4561 and please feel free to call anytime.

I am confident that you will be able to act on this matter properly and appropriately.