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April 12, 2013

**By E-mail, Facsimile (617-292-5872)**  
**and First Class Mail**

Beverly Coles-Roby, Esq., Executive Director  
Board of Registration of Hazardous Waste Site Cleanup Professionals  
One Winter Street – 3<sup>rd</sup> Floor  
Boston, MA 02108

**Re: Docket No. LSP 10AP 01**

Dear Attorney Coles-Roby and Members of the Board:

This Firm represents the Respondent in the above-referenced matter. As the Board is aware, on January 4, 2013, we filed Objections to the “Recommended Decision” and on February 1, 2013, attorney Lynn Read filed the Prosecuting Counsel’s response to the Objections.

In our Objections, we requested oral argument before the Board in accordance with 309 CMR 7.10(1). We believe that oral argument is appropriate in view of the extensive factual issues concerning the two subject sites as well as the numerous issues raised in the parties’ respective briefs.

In addition, the Board should hear oral argument on the implications to this proceeding of the regulatory amendments to the MCP recently proposed by DEP. In particular, there should be oral argument and an opportunity to submit a Reply Brief on the implications of DEP’s proposed amendments on “Non-Aqueous Phase Liquid and Source Control.” Those amendments are highly relevant to the key issue at the Carver site concerning the Respondent’s assessment and proposed removal and remediation of diesel LNAPL.

As DEP stated in its proposed MCP amendments,

“Use of the LCSM<sup>1</sup> (i.e., the fundamentals of fluid flow in porous media) is supported by the MassDEP LNAPL Workgroup, the Licensed Site Professional Association LNAPL White Paper, Interstate Technology & Regulatory Council, as well as other states and technical and regulatory organizations. . . . As the technical understanding of LNAPL behavior in particular has evolved, however, the 1/2” UCL is no longer considered appropriate as a measure of the relative potential future risk posed by the disposal site conditions. The updated science has demonstrated that NAPL thickness in a well does not correlate directly to the potential for NAPL to migrate or the stability of the NAPL in the environment.”  
(p. 161, 167 of the redlined version)

Ms. Coles-Roby has indicated that our request for oral argument is considered by the Board as a motion, and that the motion is presently pending before the Board. We respectfully request that the Board allow our request and proceed to schedule oral argument. We would intend to file a Reply to Attorney Read’s submission prior to the oral argument.

Ms. Coles-Roby has also indicated that the Board may need to appoint special counsel in this matter because she had a conflict due to her supervision of Attorney Read and/or former Board Counsel, Terry Wood, in their prosecution of this matter. We request that the Board clarify the facts concerning this conflict and explain its basis for new counsel and the process for appointing special counsel.

Finally, Ms. Coles-Roby had contacted me regarding possible settlement discussions on this matter. However, after I proposed what we considered to be a reasonable settlement, Ms. Coles-Roby indicated that the Board had previously rejected that offer and our discussions ended abruptly. If the Board wishes to explore possible settlement, we would be interested in discussing it with you. We welcome further settlement discussions with Ms. Coles –Roby, attorney Read or whomever the Board chose.

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<sup>1</sup> LNAPL Conceptual Site Model.

Beverly Coles-Roby, Esq., Executive Director  
Board of Registration of Hazardous Waste Site Cleanup Professionals  
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Please contact me if you have any questions regarding this letter. Thank you for your assistance and consideration.

Very truly yours,

A handwritten signature in cursive script, reading "Peter J. Feuerbach". The signature is written in dark ink and is positioned above the printed name.

Peter J. Feuerbach

PJF/ees

cc: Client  
Lynn Read, Esquire, (by E-mail)