



THE COMMONWEALTH OF MASSACHUSETTS
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November 16, 2006

**BY CERTIFIED MAIL: 7004 2510 0007 3140 1320
RETURN RECEIPT REQUESTED**

RICHARD A. NYLEN, JR.
LYNCH, DESIMONE & NYLEN, LLP
Attorneys at Law
12 Post Office Square
Boston, Massachusetts 02109

re: *Commonwealth of Massachusetts v. New Ventures Associates, LLC*,
Suffolk Superior Court C.A. No. 06-0790 C

Dear Chip:

This is to follow-up on our November 8, 2006, letter notifying you that New Ventures Associates, LLC ("New Ventures") is not in compliance with the Preliminary Injunction entered by the Court on October 20, 2006 ("Order") in the above captioned action. We are in receipt of your November 13, 2006 letter responding to our November 8, 2006 compliance letter. This letter addresses additional issues and actions New Ventures must take to ensure compliance with the Order.

Extent of C&D Material Placement. As you know, representatives of the Massachusetts Department of Environmental Protection ("Department") and the Office of the Attorney General performed an inspection of the Crow Lane landfill ("Site") on November 7, 2006. During this inspection, Department inspectors noted that New Ventures staff either did not know or were not certain about the extent to which construction and demolition waste fines and residual materials ("C&D Material") had been placed on the southern face and easterly face of the landfill. During the November 7, 2006 inspection, New Ventures' staff informed the

Department that the area on the south slope between the truck marked "Water" and the edge of the temporary tarp to the west did not contain C&D Material. However, Jerome meter readings taken over the surface of this area indicated hydrogen sulfide concentrations of 32 ppb, demonstrating the presence of C&D Material. New Ventures must visually examine and take Jerome meter hydrogen sulfide readings for all areas of the landfill that it does not plan to tarp and record the findings in a letter report to be submitted to the Department. Temporary tarps are to be installed in accordance with paragraphs 1 (j) and 2 of the Order in all areas where past C&D filling has occurred.

Preparation for Thanksgiving Weekend. Mayor Moak and numerous residents have expressed concern about odors during the Thanksgiving Holiday weekend. Regardless of whether FML installation has been completed for the Phase I and Phase II Areas, the tarp placement requirements of paragraph 1 (j) must be met and the flare and pretreatment system be operating properly at all times, including November 23 through 26, 2006 (Thanksgiving weekend). Pursuant to paragraphs 1 (j) and 2 of the Order, all areas that within twenty four (24) hours have undergone filling, grading, shaping, or Geocomposite gas collection system installation activity must be completely covered at all times when no work on that area is in progress, using removable, impervious tarps or poly sheeting at least 11 millimeters thick. Such measures should be completed no later than the close of business on Wednesday, November 22, 2006. New Ventures should request and receive approval from the City of Newburyport to work on Saturday and Sunday, November 18 and 19, 2006, to ensure that as much FML has been placed as soon as possible and that the tarp repair and placement requirements of paragraph 1 (j) have been met. Furthermore, it is suggested that New Ventures use tires, tied together to create an interconnected web, to secure the temporary tarps, either in conjunction with or as an alternative to sand bags.

Contingency Planning for Flare Operation. In light of the problems with the flare during the weekend of November 6 and 7, 2006, New Ventures must provide a written protocol to its employees and contractors, the City, and the Department that addresses, at a minimum: (1) a schedule for staff inspections of the flare to ensure that it is operating properly; (2) instructions for re-lighting the flare and taking steps to ensure that it remains lit; (3) contact information (names and telephone numbers, including mobile phone numbers) and instructions to notify Highland Power staff, New Ventures' staff and consultants, the City Health Inspector, and the Department whenever there is a problem with the effective operation of the flare, which notice shall also set forth the measures that New Ventures is taking to resolve the problem; and, (4) a checklist for recording the time and date of flare and pretreatment system inspections, what was observed, and any and all steps taken to correct any problems.

New Ventures shall request that Highland Power or other qualified service providers promptly respond to flare operational problems twenty-four hours a day, seven days per week, including during the Thanksgiving weekend.

New Ventures Staffing. The Department's consultant reports that New Ventures' on-Site, day shift staff are not able to fully complete their landfill monitoring duties as required by paragraph 1 (1) of the Order and Section H, paragraph 3(a) of Appendix A, due to additional duties and time spent monitoring/managing truck traffic and the scale. Paragraph 1 (1) of the Order requires that New Ventures shall:

have at least one trained employee on-Site and on-duty at all times so that the landfill is staffed twenty four (24) hours a day, seven days a week with trained employees certified in accordance with the requirements of Appendix A as capable of performing the following activities, which shall be performed on a routine or as needed basis twenty four (24) hours a day, seven (7) days a week in accordance with the performance standards in Sections F, H, and I of Appendix A: monitoring and maintaining operation of the existing open flare or the enclosed flare and LFG pretreatment system, responding to odor complaints, taking routine Jerome meter readings of hydrogen sulfide levels around the landfill's perimeter, and the other duties and monitoring responsibilities set forth in Sections F, H and I of Appendix A

New Ventures must ensure that its staff and consultants comply at all times with the requirements of paragraph 1 (1) and Appendix A of the Order, regardless of other duties.

Complaint Line and Reporting. Our November 8, 2006 compliance letter informed you that New Ventures failed to fully comply with the odor complaint monitoring, recording and reporting requirements of the Order, including the requirements in Sections H and I to Appendix A. In addition, and as we've discussed, New Ventures should, on request, provide residents with the monitoring information as it becomes available.

Phase II Gas Blanket and FML Installation. New Ventures must confirm that the FML contractor is aware and capable of providing all services required to ensure that New Ventures complies with paragraph 7 of the Order. New Ventures is required to continue installation of the blanket and covering with temporary tarps should weather prevent the final installation of the FML cap on the Phases I and Phase II Areas. Paragraph 7 states in pertinent part:

In the event that weather conditions prohibit further capping work before the FML capping has been completed for the entire Phase I and Phase II areas ... New Ventures shall complete installation of the Geocomposite gas collection system layer and associated piping for such areas and completely cover any uncapped portions of such area with impervious tarps in accordance with the requirements of paragraphs 1 (j) and 1 (m) of this Order and connect and operate the gas collection system for such areas to the active gas collection system for pretreatment and combustion by the enclosed flare, or, if the enclosed flare has not yet been installed, to the open flare in-place and on-Site as of the date of this Order, with connection to the enclosed flare once it has been installed in accordance with the requirements of paragraph 1 (b) of this Order.

Please provide a written response to this letter by Tuesday, November 21, 2006 indicating the steps New Ventures will take to comply with each of the above items.

The Department and the Office of the Attorney General hereby expressly reserve all rights and remedies to enforce all requirements of the Order

Sincerely,

/s/ Matthew Ireland
Matthew Ireland
Assistant Attorney General
Environmental Protection Division

cc: email to: Richard A. Nysten <rnylen@ldnllp.co>
Richard Chalpin, DEP (by regular first class mail)
Mike Dingle, DEP (by regular first class mail)