

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION NO. 06-0790 C

<p>COMMONWEALTH OF MASSACHUSETTS,  Plaintiff,  v.  NEW VENTURES ASSOCIATES, LLC,  Defendant.</p>
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**FINAL JUDGMENT**

*notice sent 4-30-09 m.v. m.w.d.*

This matter came before the Court for a hearing on the joint motion of the Commonwealth of Massachusetts ("Commonwealth") and New Ventures Associates, LLC ("New Ventures") for entry of Final Judgment and the Settlement Agreement executed on April 30, 2009 between the Commonwealth and New Ventures (the "Settlement Agreement"), and, after due consideration thereof, and New Ventures having expressly consented hereto, it is hereby ORDERED and

*Mass. Ct. Civ. Div. Ran, Jr. M. R. Koppke*

*In hand 4-30-09 m.v. m.w.d. mess. atty. Ran, Jr. M. R. Koppke*

ADJUDGED as follows:

1. This Court has jurisdiction over the subject matter of this action, and over the parties thereto.
2. Defendant New Ventures has a principal Massachusetts business office at 85-87 Boston Street in Everett and is a Delaware Corporation registered with the Secretary of the Commonwealth as a foreign corporation doing business in Massachusetts.
3. New Ventures owns and operates the Crow Lane Landfill, an uncapped, unlined,

**JUDGEMENT ENTERED ON DOCKET 4-30-09  
PURSUANT TO THE PROVISIONS OF MASS.R.CIV.P.58(a)  
AND NOTICE SENT TO PARTIES PURSUANT TO THE PRO-  
VISIONS OF MASS.R.CIV.P.77(d) AS FOLLOWS**

inactive landfill (“Landfill” or “Facility”) located on Crow Lane in Newburyport, Massachusetts (the “Site”) that is in the process of closure.

4. The Commonwealth filed a Complaint in this action alleging, *inter alia*, violations of G.L. c. 111, § 150A, and the regulations promulgated thereunder for site assignment and solid waste, and G.L. c. 111, §§ 142 A-O, and the regulations promulgated thereunder to prevent pollution or contamination of the atmosphere. The Complaint alleges facts that, if proven, constitute good and sufficient grounds for the relief set forth in this Final Judgment

***Civil Penalty:***

5. New Ventures New Ventures shall pay to the Commonwealth a civil penalty in the sum of \$230,000 in accordance with the following schedule:

First Installment:	\$50,000 on the effective date of the Settlement Agreement;
Second Installment	\$20,000 due by no later than fifteen (15) days after entry of this Final Judgment;
Third Installment:	\$30,000 due by no later than forty-two (42) days after entry of this Final Judgment;
Fourth Installment	\$30,000 due no later than twenty-five (25) days after the Department’s notice to New Ventures approving the Geotechnical Report required by paragraph 12(a)(iii) of this Final Judgment;
Fifth Installment	\$30,000 due no later than fifteen (15) days after the Department’s notice of deficiency, if any, pursuant to the requirements of paragraph 12(a)(vi) of this Final Judgment;

Sixth Installment: \$30,000 due on one of the following dates, whichever is applicable: in the event that the Department approved Geotechnical Report does not require modification of the MSE berm design, by no later than ninety (90) days after the Department's approval of the Geotechnical Report required by paragraph 12(a)(iii) of this Final Judgment, or; in the event that the Department approved Geotechnical Report determines that a MSE berm design modification is necessary, by no later than ninety (90) days after the Department's approval of a MSE berm design modification plan submitted in accordance with the requirements of paragraph 12(a)(v), or; by no later than ninety (90) days after the Department's approval of a revised MSE berm design modification plan, if necessary, in accordance with the requirements of paragraph 12(a)(vi);

Seventh Installment: \$40,000 no later than two hundred ten (210) days after entry of this Final Judgment.

New Ventures' obligation to pay the second through sixth installments of this civil penalty (totaling \$140,000), and \$30,000 of the seventh installment shall be suspended subject to New Ventures' timely compliance with the requirements set forth in paragraphs 6 through 11 immediately below. In the event New Ventures complies in a timely manner with each requirement set forth in paragraphs 6 through 10, its obligation to pay each installment, respectively, shall be waived, and if New Ventures complies in a timely manner with the requirements of paragraph 11, \$30,000 of the seventh installment shall be waived. All payments due under this paragraph 5 shall be made by bank certified or attorney's escrow check payable to the "Commonwealth of Massachusetts," and shall be delivered to the Office of the Attorney General, Environmental Protection Division, One Ashburton Place, Boston, Massachusetts 02108, Attention: Matthew Ireland, Assistant Attorney General. The Commonwealth will not present the check for payment of the First Installment until after this Final Judgment is entered. If any of the penalty installment payments due pursuant to this paragraph 5 are not received by the Office of the Attorney General within five (5) business days after the due date, all remaining unpaid

installment payments, together with the delinquent payment, shall immediately become due and payable (the "Accelerated Unpaid Balance"). In addition, upon such a default in payments, interest shall immediately begin accruing on the Accelerated Unpaid Balance at the rate of twelve percent (12%) per annum, and New Ventures shall be responsible for the payment to the Commonwealth of all accrued interest for the entire period of non-payment of the Accelerated Unpaid Balance. New Ventures shall also pay all expenses, including reasonable attorneys' fees and costs of collection actually incurred by the Commonwealth, associated with collection of the payment of the Accelerated Unpaid Balance and the enforcement of this Final Judgment and the Settlement Agreement.

6. If by no later than fifteen (15) days after entry of this Final Judgment, New Ventures has fully completed the requirements of Section I, "Field Work," of the "Perimeter Berm Geotechnical Investigation Protocol" attached to and incorporated by reference into the Settlement Agreement as Appendix A, the \$20,000 Second Installment shall be waived.

7. If by no later than forty-two (42) days after entry of this Final Judgment, New Ventures has submitted for Department approval the perimeter berm geotechnical investigation results analysis (the "Geotechnical Report") required by paragraph 12(a)(iii) of this Final Judgment, the \$30,000 Third Installment shall be waived.

8. If the Department approved Geotechnical Report finds that no MSE berm design modification is necessary, the \$30,000 Fourth Installment shall be waived. In the event that the Department approved Geotechnical Report finds that a MSE berm design modification is necessary in accordance with the terms and requirements of paragraph 12(a)(iii) and (iv) of this Final Judgment, the \$30,000 Fourth Installment shall be waived if New Ventures submits for Department approval the required MSE berm design modification plan within twenty-five (25) days of the Department's notice to New Ventures approving the Geotechnical Report.

9. In the event that the Department approved Geotechnical Report finds that a MSE berm design modification is necessary in accordance with the terms and requirements of paragraph 12(a)(iii) and (iv) of this Final Judgment, and the Department, pursuant to paragraph 12(a)(v), notifies New Ventures that its submitted MSE berm design modification plan proposal is deficient, the \$30,000 Fifth Installment shall be waived if, within fifteen (15) days of the Department's deficiency notice, New Ventures submits for Department approval a revised MSE berm design modification plan with a safety factor no less than 1.30 that remedies all deficiencies noted by the Department.

10. In the event that the Department approved Geotechnical Report finds that no MSE berm design modification is necessary, and, within ninety (90) days of the Department's approval of that Geotechnical Report, New Ventures' engineer of record ("Engineer of Record") has certified that New Ventures has fully completed installation of the MSE berm abutting the areas identified as "Phase I" and "Phase II" in the "Landfill Closure Phase Plan" attached to the Settlement Agreement as Exhibit 1, in accordance with the design and construction requirements of the Final Corrective Action Design plan ("Final CAD") attached and incorporated by reference into the Settlement Agreement as Exhibit 2, the \$30,000 Sixth Installment shall be waived. In the event that the Department approved Geotechnical Report finds that a MSE berm design modification is necessary, and, within ninety (90) days of the Department's approval, pursuant to paragraph 12(a)(v), of a MSE berm design modification plan, or within ninety (90) days of the Department's approval, if necessary, of a revised MSE berm design modification plan submitted pursuant to paragraph 12(a)(vi) of this Final Judgment, New Ventures' Engineer of Record has certified that the MSE berm along the Phase I and Phase II areas of the Landfill has been completed in accordance with the design and construction requirements of the Department approved MSE berm design modification plan, the \$30,000 Sixth Installment shall be waived.

11. If by no later than two hundred ten (210) days after entry of this Final Judgment, New Ventures' Engineer of Record has certified that New Ventures has fully and timely completed construction of the final flexible membrane liner ("FML") cap for the entire Landfill as required by paragraph 12(g) of this Final Judgment, in accordance with the Final CAD, \$30,000 of the Seventh Installment shall be waived.

***Injunctive Relief: Landfill Closure Deadlines***

12. New Ventures shall:

a. (i) by no later than fifteen (15) days after entry of this Final Judgment, complete the field work for the geotechnical investigation of the perimeter berm along the Phase I and Phase II Areas of the Landfill in accordance with all terms, conditions and requirements of Section I, "Field Work," of the "Perimeter Berm Geotechnical Investigation Protocol," attached to and incorporated by reference into the Settlement Agreement as Appendix A;

(ii) within 5 (five) days of completion of all requirements of Section I, Field Work, of Appendix A to the Settlement Agreement, the parties and their technical consultants will meet to review the results;

(iii) by no later than twenty-seven (27) days after completion of all requirements of Section I, Field Work, of Appendix A to the Settlement Agreement, New Ventures shall submit for Department approval the "Geotechnical Report" prepared by Geocomp Corporation of Boxborough Massachusetts ("Geocomp"), or other qualified consultant, required by Section III, "Design Verification and Geotechnical Report" of Appendix A to the Settlement Agreement, including, without limitation, a determination of whether or not any modification to the MSE berm design plan in the Final CAD is necessary based on the standards set forth in the "Design Verification" section of Exhibit 1 of Appendix A to the Settlement Agreement;

(iv) in the event that the Department approved Geotechnical Report does not require modification of the MSE berm design, New Ventures shall complete construction of the MSE berm along the Phase I and Phase II areas of the Landfill by no later than ninety (90) days after the Department's approval of the Geotechnical Report, and New Ventures shall not begin construction of the MSE berm along the Phase I and Phase II areas of the Landfill until the Depart has approved the Geotechnical Report;

(v) in the event that the Department approved Geotechnical Report finds that a MSE berm design modification is necessary, New Ventures shall, within twenty-five (25) days of the Department's notice approving the Geotechnical Report, submit for Department approval a MSE berm design modification plan with a safety factor no less than 1.30, including a reasonable construction schedule;

(vi) the Department will with reasonable promptness notify New Ventures of any deficiencies in the MSE berm design modification plan proposal and New Ventures shall within fifteen (15) days of the Department's deficiency notice submit for Department approval a revised MSE berm design modification plan with a safety factor no less than 1.30 that remedies all deficiencies noted by the Department;

- b. by no later than forty-five (45) days after entry of this Final Judgment, fabricate a forty (40) cubic yard tank (the "New Vessel") to house the media for the landfill gas pre-treatment system (the "LFG Pre-treatment System"). The parties understand that the New Vessel will be fabricated to be similar in design to systems such as the pre-treatment system at the South Hadley landfill in South Hadley, Massachusetts, and, further, that the two (2) other vessels currently in-use at the Site to house the LFG Pre-

treatment System media also have been fabricated to be similar in design to the South Hadley landfill pretreatment system. The Department will with reasonable promptness, and not later than fifty (50) days after entry of this Final Judgment, inspect the New Vessel and New Ventures shall not place media in or install the New Vessel before it has been inspected by the Department. By no later than fifty-five (55) days after entry of this Final Judgment, New Ventures shall install the New Vessel and thereafter continuously operate the New Vessel in conjunction with the other two vessels used as housing for the LFG Pre-treatment System media in accordance with the requirements in paragraph 13(b) of this Final Judgment;

- c. (i) in the event that the Department approved Geotechnical Report does not require modification of the MSE berm design, complete construction of the MSE berm along the Phase I and Phase II areas of the Landfill in accordance with the design and construction requirements in the Final CAD by no later than ninety (90) days after the Department's approval of the Geotechnical Report required by paragraph 12(a)(iii) of this Final Judgment, or;

(ii) in the event that the Department approved Geotechnical report determines that a MSE berm design modification is necessary, complete construction of the MSE berm along the Phase I and Phase II areas of the Landfill in accordance with the Department approved MSE berm design modification by no later than ninety (90) days after the Department's approval of a MSE berm design modification plan, if required pursuant to paragraph 12(a)(v) of this Final Judgment, or by no later than ninety (90) days after the Department's approval of a revised MSE berm design

modification plan, if required pursuant to paragraph 12(a)(vi);

- d. by no later than one hundred sixty-five (165) days after entry of this Final Judgment, complete construction of the sand drainage layer and the placement of loam and seed over the FML cap installed and in place in the areas identified as Phase I and Phase II in the Landfill Closure Phase Plan, in accordance with the requirements in the Final CAD. Notwithstanding the preceding sentence, New Ventures may delay construction of the sand drainage layer and placement of loam and seed in the minimum areas within Phase I and Phase II necessary to provide for safe access to the areas in Exhibit 1 identified as Phase IA, Phase IIA and Phase III in the Landfill Closure Phase Plan without disturbing the existing FML liner. New Ventures shall submit for Department approval an access route plan for the affected areas within Phase I and Phase II by no later than sixty-seven (67) days after entry of this Final Judgment. For the areas approved by the Department as necessary for safe access under this paragraph 12(d), New Ventures shall install the sand drainage layer and place loam and seed in accordance with the requirements of paragraph 12(h) of this Final Judgment;
- e. by no later than one hundred eighty (180) days after entry of this Final Judgment, remove and properly dispose all sediment resulting from Landfill erosion and all leachate contaminated sediment from the wetlands adjacent to the areas identified as Phase I and Phase II in the Landfill Closure Phase Plan;
- f. by no later than two hundred ten (210) days after entry of this Final Judgment, complete construction of the MSE berm along the South side of the Landfill abutting the areas identified as Phase IA, Phase IIA, and Phase III in the Landfill Closure Phase Plan, in accordance with the design and construction requirements in the Final CAD;

- g. by no later than two hundred ten (210) days after entry of this Final Judgment, complete construction of the final FML cap for the areas identified as Phase IA, Phase IIA, and Phase III in the Landfill Closure Phase Plan, so that the entire landfill is completely capped and all required systems have been installed, including, without limitation, the landfill gas control system in accordance with all requirements in the Final CAD. If areas within Phase IA, Phase IIA, or Phase III are not completely capped in accordance with this paragraph 12(g) by two hundred ten (210) days of entry of this Final Judgment, due to (i) Force Majeure extension(s) approved by the Department or (ii) other weather conditions that would make installation of the FML liner impractical or ineffective as certified by the Engineer of Record and the FML installation contractor, New Ventures shall completely cover and maintain the cover over any areas within Phase IA, Phase IIA, or Phase III that are not completely capped with the installed FML liner, using tarps or clay-like, low permeability soils with a hydraulic conductivity not greater than  $1 \times 10^{-6}$ , or other low permeability material approved by the Department placed to a depth of not less than one (1) foot;
- h. by no later than one (1) year and thirty (30) days after entry of this Final Judgment, complete construction of the sand drainage layer and the placement of loam and seed for the areas identified as Phase IA, Phase IIA, and Phase III in the Landfill Closure Phase Plan, in accordance with the requirements in the Final CAD;
- i. by no later than one (1) year and forty-five (45) days after entry of this Final Judgment, complete construction of the storm water controls for the areas identified as Phase IA, Phase IIA, and Phase III in the Landfill Closure Phase Plan, in accordance with the requirements of the Final CAD;

- j. by no later than one (1) year and sixty (60) days after entry of this Final Judgment, submit for the Department's approval, in accordance with 310 C.M.R. 4.00, a Landfill Closure Completion application (BWP SW 43) certifying that closure of the Landfill is complete. The application shall include an "as built" plan and a report prepared by the Massachusetts Registered Professional Engineer of record for the project that includes all the applicable Quality Control/Quality Assurance (QC/QA) data for the construction of the closure and the certifications required by 310 C.M.R. 19.011. The report shall identify and document any variations from the approved design. The QC/QA data for the project shall include documentation, by direct measurement, of the thickness of each soil layer of the cap, demonstrating that each layer has been placed in conformance with the approved design.

***Injunctive Relief: Landfill Operation and Management Requirements***

13. New Ventures shall:

- a. operate, monitor, and maintain the landfill gas control system in accordance with the requirements of the "Landfill Gas Control Protocol," attached and incorporated by reference into the Settlement Agreement as Appendix B, including, without limitation, the enclosed flare performance standards and operational requirements in the "Enclosed Flare Specifications and Operations" in Exhibit 3 to Appendix B;
- b. operate the LFG Pre-treatment System in accordance with the "LFG Performance Standards" in Section D of Appendix B to the Settlement Agreement. New Ventures shall operate the LFG Pre-treatment System in conjunction with the automated enclosed flare twenty four (24) hours a day, seven (7) days a week, with demonstrated effectiveness at controlling hydrogen sulfide, sulfur dioxide, and other landfill gas emissions to meet the requirements of G.L. c. 111, § 150A, and the implementing regulations

- at 310 C.M.R. 19.000 *et seq.*, and G.L. c. 111, § 142 A-B, and the implementing regulations at 310 C.M.R. 7.00 *et seq.*, until the Department determines, in writing, that landfill gas pre-treatment is no longer necessary or required as air pollution control and nuisance prevention at the Site;
- c. properly dispose off-Site all spent Sulfa Treat pre-treatment media, or any other pre-treatment media, used at the Site;
  - d. comply with all requirements of the “Landfill Inspection and Record Keeping Protocol” attached as Appendix I and incorporated by reference into the Settlement Agreement;
  - e. keep all active and inactive portions of the Landfill completely covered at all times in accordance with the “Landfill Cover Protocol” attached as Appendix C and incorporated by reference into the Settlement Agreement;
  - f. comply with all requirements of the “Litter Control Plan” attached as Appendix D and incorporated by reference to the Settlement Agreement;
  - g. by no later than forty-five (45) days after entry of Final Judgment, submit for Department approval a scope of work to complete the Comprehensive Site Assessment (“CSA”). The CSA completion scope of work shall provide for the following, without limitation: (i) an assessment of the leachate collection system that addresses the deficiencies identified in the Department’s CSA deficiency notice to New Ventures attached as Exhibit 3 to the Settlement Agreement, including missing sampling data; (ii) an evaluation of leachate tank 4 and the leachate collection system on the western boundary of the Landfill, and (iii) the submission of all other information identified in Exhibit 3 as missing or incomplete. The Department will with reasonable promptness notify New Ventures of any deficiencies in the CSA completion scope of work and New Ventures shall within ten (10) calendar days of the Department’s notice modify the scope

of work as necessary to remedy all deficiencies noted by the Department. New Ventures shall submit for the Department's approval a Final CSA Report by no later than 120 days after notice of the Department's approval of the CSA completion scope of work. The CSA Report shall include, without limitation, an evaluation of the leachate collection and management systems at the Landfill, including recommendations, with a proposed implementation schedule, for any leachate collection system modifications necessary to mitigate and control the release of leachate to wetlands and surface waters, including those adjacent to tank 4 and along the western boundary of the Landfill. New Ventures shall implement the recommendations in the Department approved Final CSA Report in accordance with the final report's schedule;

- h. implement measures necessary to control the generation and release of leachate from the Landfill, including without limitation the measures described in the "Leachate Control Plan" attached as Appendix E and incorporated by reference into the Settlement Agreement. New Ventures shall maintain and operate the leachate control system as necessary to assure effective leachate control in compliance with the applicable requirements of 310 C.M.R. 19.000 *et seq.*, including, without limitation, 310 C.M.R. 19.116 and 310 C.M.R. 19.130(30);
- i. implement measures necessary to control the release of storm water from the Facility, including, without limitation, the measures described in the "Interim Storm Water Control Plan" attached as Appendix F and incorporated by reference into the Settlement Agreement. New Ventures shall operate the temporary storm water control system as necessary to assure effective control of storm water in compliance with the applicable requirements of 310 C.M.R. 19.000 *et seq.*, including, without limitation, 310 C.M.R. 19.130(19) and (20);

- j. staff the Landfill with no fewer than three (3) trained employees and have at least one (1) trained employee on-Site and on-duty at all times so that the Landfill is staffed twenty-four (24) hours a day, seven (7) days a week with trained employees certified in accordance with the requirements of Appendix B to the Settlement Agreement 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 requirements of Appendix B: monitoring and maintaining operation of the existing enclosed flare and LFG Pre-treatment 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 Appendix B, and Appendix I to the Settlement Agreement, Landfill Inspection and Record Keeping Protocol.

14. Subject to the terms, conditions, and requirements of paragraph 15 and 16 of this Final Judgment, New Ventures may, beginning on the day after entry of this Final Judgment, use C&D Material generated by the Wood Waste facility in Everett, Massachusetts or Department approved processors in accordance with the requirements of this paragraph 14, provided that the C&D Material is thoroughly mixed with soil in a one-to-one (1:1) by volume ratio during placement. At all times when C&D Material is being accepted at the Site for use as final grading and shaping material, New Ventures shall maintain a stockpile of at least 3,000 cubic yards of soil for use in 1:1 mixing with C&D Material for placement as shaping and grading material, as required by Exhibit 2 to the 2005 Administrative Consent Order with Penalty ("2005 ACOP"), attached as Exhibit 4 to the Settlement Agreement. No C&D Material shall be stockpiled or temporarily stored at the Site at any time except as follows: at the end of a day when any filling, grading, shaping, or excavation activity has taken place at the Landfill (a "Work Day"), up to two

truckloads of C&D Material may be temporarily stored provided that the C&D Material is mixed with soil at the required one-to-one (1:1) ratio prior to storage and the stored C&D Material and soil mix is placed as Landfill shaping and grading material at the start of the following Work Day.

15. New Ventures shall only accept, temporarily store, or place as shaping, grading or fill at the Landfill C&D Material processed in accordance with the "Gypsum Removal Protocol," attached as Appendix G and incorporated by reference into the Settlement Agreement.

16. Subject to the provisions of this paragraph 16(a) through (f), inclusive, if the Department determines that New Ventures has violated any term, condition, or requirement of this Final Judgment or the Settlement Agreement, New Ventures, upon notice from the Department, shall immediately cease and thereafter desist from accepting or placing as grading or shaping material any C&D Material at the Site.

- a. Within sixty (60) hours of notice from New Ventures that it has returned to compliance (seventy-two (72) hours if the 60-hour period includes a weekend or holiday), the Department will inspect the Site and notify New Ventures of the results of that inspection. If the Department determines that New Ventures has returned to compliance, the cease and desist order shall be deemed lifted. The Department need not lift the cease and desist order if it discovers other violations during the compliance inspection, provided that the Department notifies New Ventures of the new violation(s) within the 60-hour (or 72-hour) period. Such notice will trigger the above provisions of this paragraph 16 regarding those violation(s). Notice of any additional violations discovered during the compliance inspection may be included within the determination regarding the initial violation;
- b. Violations of the record keeping requirements of Appendix I to the Settlement Agreement, Landfill Inspection and Record Keeping Protocol, will not be cause or provide a basis for ceasing acceptance and placement

of C&D Materials;

- c. Violations of the leachate management requirements in paragraph 13(h) and Appendix E, Leachate Control Plan, of the Settlement Agreement will not be cause or provide a basis for ceasing acceptance and placement of C&D Materials;
- d. Brief Landfill gas emission episodes that create or result in Department verified nuisance odors will not be cause or provide a basis for ceasing acceptance and placement of C&D Materials so long as New Ventures:
  - (i) is in full compliance with the requirements of Sections B, C, D, and E of Appendix C to the Settlement Agreement, Landfill Cover Protocol, and Sections D through G, inclusive, of Appendix B to the Settlement Agreement, Landfill Gas Control Protocol;
  - (ii) has within seventy-two (72) hours of notice to New Ventures of Department verified nuisance odors, returned to and remained in full compliance with the air quality and nuisance requirements of 310 C.M.R. 19.000 *et seq.* and 310 C.M.R. 7.00 *et seq.*
- e. If C&D Material placement has been shut down by the Department's issuance of a cease and desist order under this paragraph 16 for violation(s) of paragraphs 13(a) or 13(b), the cease and desist order shall be deemed lifted upon New Ventures' submission to the Department of a certification, based on an on-Site inspection, by the Engineer of Record or his/her designee that the landfill gas control system, enclosed flare, and the LFG Pre-treatment System are operating with demonstrated effectiveness in accordance with the all of the performance standards in Appendix B to the Settlement Agreement, Landfill Gas Control Protocol. If, however, within five (5) days of such certification, the Department conducts an inspection and issues a cease and desist order in accordance with this paragraph 16 for the same violation(s) of paragraph 13(a) or

13(b), a certification based on another Site inspection by the Engineer of Record or his/her designee shall not be deemed sufficient to lift the cease and desist order and the Department will conduct an inspection and make a compliance determination in accordance with the notice and inspection provisions and procedures of subparagraph 16(a) of this paragraph.

- f. C&D Material placement has been shut down by the Department's issuance of a cease and desist order under this paragraph 16, New Ventures shall continue to comply with all of the requirements of this Final Judgment and the Settlement Agreement except for those provisions in paragraph 12(g) dependent on C&D Material placement for compliance.

17. Starting thirty (30) days after New Ventures has fully and completely installed the final FML cap and gas control system for the entire Landfill in accordance with all requirements in paragraph 12(g), the requirement in paragraph 13(j) that the Landfill be staffed twenty-four (24) hours a day, seven (7) days a week will no longer be required provided that:

- a. the Engineer of Record certifies that installation of the final FML cap, landfill gas control system, and all other systems required by paragraph 12(g) have been completed in accordance with the specifications and requirements of the Final CAD, except that this certification need not include as-built plans and related documentation necessary for the final Certification Report required by paragraph 12(j);
- b. the Engineer of Record certifies that the landfill gas system is operating in full compliance with the performance standards in Appendix B to the Settlement Agreement, Landfill Gas Control Protocol;
- c. the Engineer of Record certifies that New Ventures is in full compliance with the leachate management requirements in Appendix E to the Settlement Agreement, Leachate Control Plan; the storm water

management requirements in Appendix F to the Settlement Agreement, Interim Storm Water Control Plan; and the inspection, monitoring, and reporting requirements in Appendix I to the Settlement Agreement, Landfill Inspection and Record Keeping Protocol;

- d. New Ventures fully and completely implements and maintains the twenty-four (24) hour, seven (7) day a week monitoring plan required by the "Post-Cap, 24/7 Landfill Monitoring Protocol," attached and incorporated by reference into the Settlement Agreement as Appendix H; and
- e. If twenty-four (24) hour a day, seven (7) day a week Landfill staffing is no longer required in accordance with the provisions in this paragraph 17 and New Ventures demonstrates to the Department that certain inspection, sampling, and reporting requirements in Appendices B, D, E, or I to the Settlement Agreement are no longer necessary to control nuisance odors, assure compliance with the requirements of Appendix E to the Settlement Agreement, Leachate Control Plan, or assure that the landfill gas collection system is operating in full compliance with the requirements of Appendix B to the Settlement Agreement, Landfill Gas Control Protocol and thus may be modified or eliminated, Appendix H to the Settlement Agreement, Post-Cap, 24/7 Landfill Monitoring Protocol, shall be amended to reflect the Department approved modifications. The Department will promptly respond to any written request by New Ventures made under this paragraph 17 (e) to modify or eliminate certain inspection, sampling, or reporting requirements.

In the event that the landfill gas system is not operating in compliance with the requirements of Appendix B to the Settlement Agreement and the elimination of the twenty-four (24) hour a day, seven (7) day a week staffing requirement of Paragraph 13(j) is likely to contribute to the generation of nuisance odors verified by the Department or

conditions that may be detrimental to the public health, welfare, safety, or the environment, the Commonwealth may move that the twenty-four (24) hour a day, seven (7) day a week staffing requirements of paragraph 13(j) be reinstated. Nothing in this paragraph 17 shall be deemed to in any way limit or preclude the Commonwealth's enforcement rights and remedies under this Settlement Agreement or the Final Judgment, including, without limitation, those reserved in paragraphs 28, 29, 31, and 34 of this Final Judgment, and paragraphs 27, 28, 30 and 33 of the Settlement Agreement.

18. In addition to the civil penalties due pursuant to paragraph 5 of this Final Judgment, New Ventures shall pay stipulated civil penalties to the Commonwealth in accordance with the following terms and schedule:

- a. New Ventures shall pay stipulated civil penalties to the Commonwealth for any and all daily reporting violations not fully and completely corrected within twenty-four (24) hours of the time any daily monitoring, recording, or reporting activity was to be performed or was due pursuant to the requirements of Section G of Appendix I to the Settlement Agreement, Landfill Inspection and Record Keeping Protocol, or Appendix H to the Settlement Agreement, Post-Cap, 24/7 Landfill Monitoring Protocol. If any stipulated penalties are due in accordance with the terms of this paragraph 18(a), New Ventures shall pay all accrued stipulated penalties from the day a violation occurs through and until the violation is corrected, in the following amounts:

<u>Period of Violation</u>	<u>Penalty per Day</u>
First (1 <sup>st</sup> ) through third (3 <sup>rd</sup> ) day	\$ 500.00
Fourth (4 <sup>th</sup> ) through fourteenth (14 <sup>th</sup> ) day	\$ 1,000.00
Fifteenth (15 <sup>th</sup> ) through twenty-ninth (29 <sup>th</sup> ) day	\$ 2,500.00
Thirtieth (30) day and each day thereafter	\$ 5,000.00

- b. New Ventures shall pay stipulated civil penalties to the Commonwealth for any and all reporting violations, other than daily reporting requirements, not fully and completely corrected within seven calendar days of the time any weekly or other monitoring, recording, or reporting activity was to be performed or was due pursuant to the requirements of Sections C, E.4, and G of Appendix I to the Settlement Agreement, Landfill Inspection and Record Keeping Protocol. If any stipulated penalties are due in accordance with the terms of this paragraph 18(b), New Ventures shall pay all accrued stipulated penalties from the day a violation occurs through and until the violation is corrected, in the following amounts:

<u>Period of Violation</u>	<u>Penalty per Day</u>
First (1 <sup>st</sup> ) through sixth (6 <sup>th</sup> ) day	\$ 250.00
Seventh (7 <sup>th</sup> ) through fourteenth (14 <sup>th</sup> ) day	\$ 500.00
Fifteenth (15 <sup>th</sup> ) day and each day thereafter	\$ 1,000.00

- c. Stipulated civil penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day New Ventures corrects the

