

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>
--

*5/28/10
Argued in
open ct.
Under
adjudgment*

2010 MAY 19 PM 12:42
MICHAEL J. HANCOCK
CLERK/HABISTRAL

*6/2/10
Denied
See my written
opinion issued
this date
Justice*

Notice sent
6/03/2010
M. I.
M. W. D.
R. A. N., JR.
L. D. & N.
M. R. R.
K. & P.

**COMMONWEALTH'S MOTION FOR AN ORDER DECLARING THAT
DEFENDANT NEW VENTURES IS IN CONTEMPT OF THIS COURT'S
MARCH 30, 2010 DEFAULT ORDER**

As pled in the Commonwealth's complaint for civil contempt, filed herewith,

defendant New Ventures Associates, LLC ("New Ventures") is in contempt of this Court's

(sc) (Cratsley, J.) March 30, 2010 Order ("Default Order") declaring that New Ventures defaulted on its obligations to close the Crow Lane Landfill and, further, ordering that New Ventures submit for Massachusetts Department of Environmental Protection ("MassDEP") approval a full and complete revision of the closure and post-closure costs estimates for the Landfill. See Default Order, p. 2, ¶ 4. As demonstrated by the Commonwealth's affidavits, as of the date of this motion, New Ventures has not submitted to MassDEP any revised closure or post-closure cost estimate.

The Commonwealth respectfully requests that this Court declare that New Ventures is in contempt of its March 30, 2010 Default Order, and also declare that New Ventures has further defaulted on its Landfill closure obligations by its contempt of this Court's order. This Court should order that New Ventures comply with the Default Order, and the Commonwealth requests that New Ventures be ordered to pay a daily penalty for each and every day during which it remains in contempt in order to compel compliance.

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>
--

5/28/10
Argued in open court
Under advisement

6/2/10 This motion is continued
to Friday, Oct 1, 2pm, for
mediation
to occur.
See my written opinion.

CLERK MAGISTRATE
MAY 19 PM 12:42

Notice sent
6/03/2010
M. I.
M. W. D.
R. A. N., JR.
L.D. & N.
M. R. R.
K. & P.

**COMMONWEALTH'S MOTION FOR SUPPLEMENTAL ORDER DECLARING
THAT DEFENDANT NEW VENTURES HAS DEFAULTED ON ITS CLOSURE
OBLIGATIONS AND AUTHORIZING MASSDEP TO CONSTRUCT THE BERM
AND COMPLETE OTHER LANDFILL CLOSURE WORK**

See my written opinion.

[Signature]
Justice

(sc) Despite this Court's (Cratsley, J.) March 30, 2010 Order ("Default Order") declaring that defendant New Ventures Associates, LLC ("New Ventures") defaulted on its obligations to close the Crow Lane Landfill and authorizing the Massachusetts Department of Environmental Protection ("MassDEP") to "control and direct the use of all remaining Trust Funds," New Ventures continues to delay Landfill closure work required by the Final Judgment. The Commonwealth therefore now seeks a further order authorizing MassDEP to perform additional closure work, including completion of the design and construction of the Landfill berm.

As demonstrated by the attached affidavits and memorandum submitted in support of this motion, New Ventures has admitted that it will not meet the Landfill closure deadlines in the Settlement Agreement and April 30, 2009 Final Judgment in this case. Among other violations, New Ventures has failed to comply with the Final Judgment's requirements that it make necessary safety and stability modifications to the Landfill's berm design and construction plan and then build the berm according to a MassDEP approved design. The berm contains and supports the massive weight behind the Landfill's base and steep side

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
SUFFOLK SUPERIOR COURT

Suffolk, ss

COMMONWEALTH OF MASSACHUSETTS,
Plaintiff

V.

NEW VENTURES ASSOCIATES, LLC,

*Defendant

Notice sent
6/03/2010

M. I.
M. W. D.
R. A. N., JR.
L. D. & N.
M. R. R.
K. & P.

5/28/10
Argued in
open court
[Signature]

CLERK OF THE COURT

2010 MAY 24 PM 3:15

CA # SUCV2006-00790

6/2/10 Denied. See my
written opinion
issued this date

[Signature]
Justice

MOTION AND MEMORANDUM OF DEFENDANT,
NEW VENTURES ASSOCIATES, LLC TO
COMPEL CLOSURE OF THE CROW LANE LANDFILL PURSUANT TO
DEFENDANTS CLOSURE AND POST-CLOSURE SCHEDULE AND
FOR THE RELEASE OF FAM FUNDS

(sc)

I. BACKGROUND

1. This within civil litigation involves defendant, New Ventures Associates, LLC (*hereinafter* "New Ventures") closure of the Crow Lane Landfill (*hereinafter, the* "Landfill), a previously inactive, unlicensed landfill located at Crow Lane, Newburyport, Massachusetts. New Ventures' predecessor did not close the landfill in accordance with the rules and regulations of Massachusetts Department of Environmental Protection (*hereinafter the* "Department"). The predecessor disposed of municipal waste, sludge and other materials from the date of commencement until in or about 1972.
2. New Ventures purchased the Landfill on or about 2000, and subsequent thereto entered into an Administrative Consent Order (*hereinafter the* "2003 ACO") in 2003, and agreed to a Preliminary Injunction (*hereinafter the* "2006 Order") for the closure of the first half of the Landfill on or about October 2006. New Ventures further entered into a Settlement

NOTICE

Y

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO. 06-0790 C

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

NEW VENTURES ASSOCIATES, LLC,

Defendant.

5/28/10 Argued in open court
Under a discovery order.

COMPLAINT FOR
CIVIL CONTEMPT

6/2/10
This complaint is
ordered Dismissed
See my written opinion
issued this date.

RECEIVED
JULY 19 PM 12:42
JUSTICE

Notice sent
6/03/2010
M. I.
M. W. D.
R. A. N., JR.
L. D. & N.
M. R. R.
K. & P.

INTRODUCTION

1. The Commonwealth of Massachusetts brings this action for civil contempt pursuant to Mass. R. Civ. P. 65.3 against defendant New Ventures Associates, LLC ("New Ventures") for violating the requirements of this Court's (Cratsley, J.) March 30, 2010 Order ("Default Order") declaring that New Ventures defaulted on its obligations to close the Crow Lane Landfill in Newburyport and, further, ordering that New Ventures submit for Massachusetts Department of Environmental Protection ("MassDEP") approval a full and complete estimate of Landfill closure and post-closure costs.

PARTIES

2. The plaintiff is the Commonwealth of Massachusetts ("the Commonwealth"), appearing by and through the Attorney General and the Department of Environmental Protection ("the Department").

3. The Attorney General is the chief legal officer of the Commonwealth and is

NOTICE

X

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 06-0790C

COMMONWEALTH OF MASSACHUSETTS,
Plaintiff

vs.

NEW VENTURES ASSOCIATES, LLC,
Defendant

Notice sent
6/03/2010
M. I.
M. W. D.
R. A. N., JR.
L. D. & N.
M. R. R.
K. & P.

DECISION OF THE COURT ON THE COMMONWEALTH'S
COMPLAINT FOR CIVIL CONTEMPT

(sc)

Following a hearing on Friday, May 28, 2010, with all parties participating, the plaintiff's complaint for civil contempt is ordered dismissed. It is undisputed that the defendant, New Ventures Associates, LLC, delivered closure and post-closure cost estimates to the Commonwealth on May 21, 2010. Because there was no time deadline for these submissions in my Court Order of March 30, 2010, nor any requirement that such "revised closure and post-closure cost estimates" be acceptable to the plaintiff or even reasonable, but only that they be completed and delivered, I cannot say that there has been a violation by the defendant of a clear and unequivocal order of this Court. Therefore, the plaintiff cannot meet its burden of proof and its complaint for civil contempt is dismissed and its Motion for an Order Declaring that Defendant New Ventures is in Contempt of this Court's March 30, 2010 Default Order is Denied.

**ORDER OF THE COURT ON THE COMMONWEALTH'S
MOTION FOR SUPPLEMENTAL ORDER DECLARING THAT DEFENDANT
NEW VENTURES HAS DEFAULTED ON ITS CLOSURE OBLIGATIONS
AND AUTHORIZING MASSDEP TO CONSTRUCT THE BERM AND
COMPLETE OTHER LANDFILL CLOSURE WORK**

Following a hearing in Friday, May 28, 2010, with all parties participating, this Court continues this motion without resolution until Friday October 1st and orders the parties to participate in voluntary mediation with a mediator of their choice. Each side shall submit to the other side the names of five mediators from the names on the rosters of the programs approved to provide mediation in the Superior Court. The list of approved programs in the Superior Court is attached to this opinion. If the parties cannot agree on a mediator from the ten or fewer names on their respective lists, they shall submit their lists to the Court for the selection of a mediator from the two lists. The selection of the mediator or the submission to the Court shall be made by July 1, 2010 and the mediation shall proceed in July, August and September, 2010, unless a shorter time can be agreed upon.

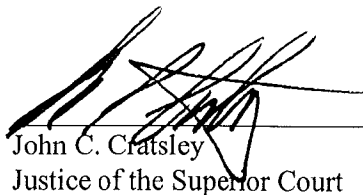
I make this decision for the following reasons: First, the parties have been unable to communicate with each other about closure procedures and, more particularly, about the completion of the design and construction of the Landfill Berm. A mediator will facilitate conversation between the parties about closure procedure and costs, focusing on the construction of a stable and safe Berm. Second, the issue of expenditure of money from the FAM versus the expenditure of other public funds should FAM monies not be sufficient, dictates a mediated approach in an effort to create a closure plan within the limited budget of the FAM. Third, I cannot say after one oral argument that there is sufficient proof in the record that the defendant

New Ventures has defaulted on its closure obligations. They have certainly been contentious with the Commonwealth and have consistently suggested less expensive approaches to closure of the landfill but, in the end, New Ventures has insisted that if the Commonwealth will only sit down with them, the issues of closure, berm construction, current berm deficiencies, application of safety factors, and the needs of the west side of the berm, can be resolved. I think a mediator can help.

Notice sent
to all parties
6/03/2010
(sc)

**DECISION OF THE COURT ON THE MOTION OF THE
DEFENDANT NEW VENTURES ASSOCIATES LLC TO COMPEL
CLOSURE OF THE CROW LANE LANDFILL PURSUANT TO
DEFENDANTS CLOSURE AND POST-CLOSURE SCHEDULE AND
FOR THE RELEASE OF THE FAM FUNDS**

This motion is Denied for all the reasons discussed above in my decision to order mediation for this closure dispute. The Commonwealth has raised serious concerns about the ability of New Ventures to complete the closure of this landfill consistent with applicable agreements and regulations. New Ventures should have one final opportunity using a third-party mediator to resolve their disputes with the Commonwealth about closure procedures and costs. If mediation fails, the drastic remedy sought by the Commonwealth of default and takeover of the closure process would certainly be required by the Fall of 2010. The proposal of New Ventures that they be immediately permitted by this Court to close the landfill on their schedule and with their exclusive use of the FAM funds is entirely inconsistent with mediation in which each side must participate in flexible negotiation to achieve a new closure plan. Therefore New Ventures Motion to Compel Closure is Denied.


John C. Cratsley
Justice of the Superior Court

Dated: June 2, 2010