

COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

File No. ACO-NE-01-4001

In the Matter of:	)	
	)	CONSENT ORDER AND
New Ventures Associates, LLC	)	NOTICE OF NONCOMPLIANCE
Newburyport	)	FMP# 39545
	)	

**I. THE PARTIES**

1. The Department of Environmental Protection (the "Department") is a duly constituted agency of the Commonwealth of Massachusetts established pursuant to M.G.L. c. 21A, §7, with a principal office located at One Winter Street, Boston, Massachusetts 02108, and a regional office located at 205A Lowell Street, Wilmington, Massachusetts 01887.

2. New Ventures Associates, LLC ("New Ventures") is a Delaware corporation with a business address at 85-87 Boston Street, Everett, Massachusetts 02149. New Ventures is the current owner of the Crow Lane Landfill in Newburyport, Massachusetts (the "Facility").

**II. STATEMENT OF FACTS AND LAW**

3. The Department is responsible for the implementation and enforcement of M.G.L. c. 111, §150A and M.G.L. c. 111, §150A1/2, and the regulations promulgated thereunder at 310 CMR 16.00 and 19.000. The Department has authority under M.G.L. c. 21A, §16, and the regulations promulgated thereunder at 310 CMR 5.00, to assess civil administrative penalties to persons in noncompliance with its regulations.

4. The Facility is uncapped, unlined, and inactive. New Ventures purchased the site on which the Facility is located from City Landfill Trust of Hampton Falls, New Hampshire in April of 2000.

5. The following facts have led the Department to issue this Consent Order:

A. The Department's records indicate that the Facility was last operated by Marcellos Disposal Inc. ("Marcellos"). Marcellos ceased operations at the Facility in 1987. Under 310 CMR 19.021(4), the owner of an inactive landfill that was in operation after April 21, 1971, but ceased operations prior to July 1, 1990, was required, prior to January 1, 1992, to file proof of approved final closure or a final closure plan. Marcellos did not make the required filing prior to January 1, 1992.

- B. On May 18, 2000, Department personnel observed that wood chips from treated and painted wood had been disposed over a two (2) acre area of this Facility. Wood chips are considered a solid waste.
- C. On August 14, 2000, the Department met with New Ventures representatives to discuss the process that New Ventures would have to follow to install a final cover system at this Facility and to obtain the Department approval of the closure. At this meeting it was explained that no activity could commence at the Facility until New Ventures had entered into an Administrative Consent Order ("ACO"), which incorporated the *Guidelines for Determining Closure Activities at Unlined Landfill Sites* issued by Assistant Commissioner, James Colman, on July 17, 2000. Following the August 14, 2000 meeting, these Guidelines were revised. Therefore, the ACO will incorporate the July 6, 2001 *Revised Guidelines for Determining Closure Activities at Inactive Unlined Landfill Sites* (the "Guideline"). New Ventures also needed to submit to the Department for approval a conceptual grading plan for closure of the Facility. A proposed conceptual grading plan, prepared by GZA GeoEnvironmental, Inc., was presented at this meeting but was not formally submitted at that time for the Department's review and/or approval.
- D. New Ventures and the City of Newburyport have entered into a Host Community Agreement entitled "Host Community Agreement Between the City of Newburyport, Massachusetts, and New Ventures Associates, LLC", dated October 7, 2002. The Department is not a party to this Host Community Agreement, which is separate from this ACO between the Department and New Ventures.

6. The following regulations have not been complied with:

A. 19.015: Compliance

"No person shall construct, modify, operate or maintain a facility except in compliance with a site assignment, permit or plan approved by the board of health or the Department, as applicable, and any authorizations issued by the Department and all conditions included in a permit, approval or authorization for said facility."

B. 19.021: Transition Requirements for Existing Facilities

"(4) Inactive Landfill Facility Filing Schedule

(a) Prior to January 1, 1992, the owner of an inactive landfill or dumping ground that was in operation after April 21, 1971 but ceased operations prior to July 1, 1990 shall file:

1. proof that the facility was closed in accordance with plans approved by the Department; or
2. a final closure and post-closure plan in accordance with 310 CMR 19.030(3)(c)5. if the facility was not closed in accordance with a closure/post-closure plan approved by the Department.

(b) The owner of an inactive landfill or dumping ground that ceased operations prior to April 21, 1971 may be required to file a final closure and post closure-plan if so ordered by the Department."

C. 19.143: Post-Closure Use of Landfills

"(1) Applicability. Pursuant to M.G.L. c. 111, § 150A no site on which a facility was operated shall be used for any other purpose without the prior written approval of the Department."

7. The parties have agreed to enter into this Administrative Consent Order ("ACO") because they agree that it is in their own interests, and in the public interest, to proceed promptly with the resolution of outstanding compliance issues and closure of the Facility by performing the actions called for herein rather than expend additional time and resources litigating the allegations set forth above. This ACO and New Ventures' consent hereto shall not constitute or be construed as an admission of any fact or allegation set forth herein except for purposes of the issuance and enforcement of this ACO.

**III. DISPOSITION AND ORDER**

For the reasons set forth above, the Department hereby issues, and New Ventures hereby consents to, the following Order.

8. The Department's authority to issue this Order is conferred by M.G.L. c. 21A, §16, and the regulations promulgated thereunder at 310 CMR 5.00.

9. New Ventures hereby waives its right to an adjudicatory hearing before the Department on, and judicial review of, the issuance and terms of this ACO and to notice of any such rights of review.

10. This ACO shall be binding on New Ventures and on its officers, employees, agents, successors and assignees. New Ventures shall not violate this ACO and shall not allow or suffer its officers, employees, agents, successors, assignees or contractors to violate this ACO. New Ventures shall provide a copy of this ACO to each successor or assignee concurrent with establishing any succession or assignment.

11. Nothing in this ACO shall be construed or operate as barring, diminishing, adjudicating or in any way affecting (i) any legal or equitable right of the Department to issue any additional Order or to seek any other relief with respect to the subject matter covered by this ACO, or (ii) any legal or equitable right of

the Department to pursue any other claim, action, suit, cause of action, or demand which the Department may have with respect to the subject matter covered by this ACO, including, without limitation, any action to enforce this ACO in an administrative or judicial proceeding.

12. This ACO shall not be construed or operate as barring, diminishing, adjudicating, or in any way affecting, any legal or equitable right of the Department with respect to any subject matter not covered by this ACO.

13. New Ventures shall comply with the landfill assessment and closure design procedures set forth at 310 CMR 19.000, the procedures for Timely Actions and Fees set forth at 310 CMR 4.00, the Department's *Landfill Technical Guidance Manual* ("Guidance Manual" revised May 1997), applicable provisions of the Guideline, any amendments and/or modifications to these documents, and shall perform landfill closure design and landfill closure in accordance with the following schedule:

A. No later than thirty (30) days after issuance of the Final Order of Conditions of the pending wetlands appeal involving the landfill, New Ventures shall have submitted to the Department a conceptual landfill closure plan, including an interim grading plan and details delineating the proposed limits of closure, grades and slopes, erosion control and stormwater management. The interim grading plan shall depict the **minimum contours** necessary to achieve a minimum slope of 5% over all areas of the landfill, exclusive of material required for the final cover system, and the amount of grading and shaping material, in cubic yards, necessary to achieve these **minimum contours**. Existing side slopes greater than 5% and less than or equal to 3 horizontal to 1 vertical (3:1) shall be assumed acceptable as is for purposes of this evaluation. Material required to be removed from side slopes greater than 3:1 shall be evaluated and subtracted from the amount of material needed to increase grades to 5% on other areas of the landfill.

The Department may consider an amount of material greater than the volume necessary to achieve the minimum contours identified above pursuant to the criteria established in the Guideline at III.G.3. and 4.

The interim grading plan shall be accompanied by a materials management plan, which at a minimum shall include: a listing of the sources and types of materials to be used as grading and shaping material; a Bill of Lading ("BOL") procedure; haul routes; unloading procedures; on-site materials inspection; interim storm water controls; quality assurance and quality control procedures, including on-site sampling and physical and chemical analysis of grading and shaping materials to ensure that materials brought to the site are suitable for use as grading and shaping materials; and noise and dust mitigation plans.

New Ventures shall develop a BOL procedure, for the Department's approval, which employs a separate, dedicated and numbered form, that describes, at a minimum, the transporter's name, the New Ventures employee overseeing the receipt of the material, the amount of material being transported in cubic yards, the material's origination and the

material's composition. This uniquely numbered form must accompany each truckload of material transported to the site and a copy shall be maintained on site for inspection by Department employees. The conceptual landfill closure plan shall delineate any proposed alterations, expansions and/or modifications to the interim grading plan.

B. If New Ventures proposes to alter, expand or modify any of the dimensions of the landfill beyond those depicted in the interim grading plan, as approved by the Department, or extend the period of time for the closure beyond that identified in the interim grading plan, then New Ventures shall comply with the requirements of Paragraph 17.

C. Only after the Department has (a) reviewed and approved the interim grading plan; (b) reviewed and approved the BOL procedure required by paragraph III. 13. A. above; (c) been provided documentation that New Ventures conducted a public information session (refer to III.B.2.a. of the Guideline) in Newburyport prior to the execution of this ACO which meeting outlined the scope, breadth and details of the proposed project; and (d) been provided with documentation that the Financial Assurance Mechanism ("FAM") required by paragraph III. 14. below has been obtained will the Department allow New Ventures to initiate placement of approved materials.

"Approved materials" are defined as being limited to only those materials that the Department has approved in accordance with Section III.F. of the Guideline, or materials the Department considers not to be solid waste or that the Department has previously approved, via a generic Beneficial Use Determination, the Department's Policy on Contaminated Soils COMM #97-001 or other approval, for use in the subgrade component of a final cover system.

Materials, other than "approved materials", may be considered for use at the Facility as a substitute for a component of the Department's standard final cover system only after New Ventures has applied for and received written approval from the Department for each specific material proposed to be used by New Ventures to close this Facility.

D. Within forty-five (45) days after receipt of the Department approval of the conceptual landfill closure plan and BOL procedure, New Ventures shall submit to the Department an Initial Site Assessment ("ISA") which includes a scope of work ("SOW") for a Comprehensive Site Assessment ("CSA") and, updates (if any) to the materials management plan.

E. Within forty-five (45) days after receipt of the Department approval of the conceptual landfill closure plan and BOL procedure, New Ventures shall submit to the Department a Corrective Action Design ("CAD") for the installation of a standard final cover system as depicted in the Department's Guidance Manual. The CAD can include a proposal for approval of a Post Closure use. Before the Department will issue any approval

of a final cover system pursuant to the CAD and Post Closure use, New Ventures shall provide a 21 day public comment period regarding the CAD and Post Closure Use by sending notice to the public through local newspapers. New Ventures shall furnish the Department with any written comments received by New Ventures regarding the CAD and Post Closure Use.

F. After the Department reviews and approves the CAD and Post Closure use, New Ventures shall proceed with the project in accordance with conditions and limitations set forth by the Department in the approval document. Final stormwater controls must be in place prior to any grading of any area beyond the limits defined in the conceptual landfill closure plan. Prior to commencing the use of the Facility for any approved active Post Closure use New Ventures will be required to submit for review and approval a Quantitative Risk Assessment in accordance with the Department's Guidance Manual.

G. No later than thirty (30) days after the Department's written approval of the CSA scope of work, New Ventures shall initiate the CSA. Not later than nine (9) months after initiation of the CSA, New Ventures shall submit to the Department a draft CSA Report along with a preliminary Corrective Action Alternatives Analysis ("CAAA") prepared in accordance with Section III.B.4.b. of the Guidelines. Within fifteen (15) months after the Department's approval of the CSA scope of work, New Ventures shall submit a CSA Report to the Department for approval and an updated CAAA, if necessary.

H. No later than forty-five (45) days after the Department's written approval of the CSA Report, New Ventures shall submit a final CAAA Report to the Department for approval.

I. No later than ninety (90) days after the Department's written approval of the CAAA report, New Ventures shall submit for the Department approval a modified CAD, if necessary, and Post-Closure Maintenance and Monitoring Plans.

J. New Ventures shall complete the installation of the final cover system within three years of the Department's approval of the conceptual landfill closure plan.

K. Within sixty (60) days after closure is completed, New Ventures shall submit to the Department a landfill closure certification report in accordance with 310 CMR 19.000.

14. Prior to the Department issuing an approval of the interim grading plan under paragraph III. 13. C. above, New Ventures shall have furnished to the Department a FAM, in accordance with 310 CMR 19.051, to assure completion of all obligations of this ACO and regulations. "All obligations" shall include but not be limited to the maintenance and monitoring of the closed facility (refer to 310 CMR 19.142). This FAM shall be reviewed periodically and increased as required by 310 CMR 19.051. The first periodic review and any necessary increase shall be made to this FAM prior to the Department's approval of the CAD.

15. Any request by New Ventures to use materials other than "Approved Materials" (refer to paragraph III. 13. C.), shall be submitted to the Department for review and approval in the form of an application to modify the approved CAD. Any such application shall comply with the requirements of 310 CMR 19.000 and 310 CMR 4.00 and shall, at a minimum, provide the information specified in the Guideline at Sections III. D 1. through 3., III E. 1 through 4 and, III F. 2.

16. New Ventures shall, on a quarterly basis, certify to the Department the following: (1) that the closure of the Facility is proceeding in compliance with the approved plans and this Consent Order; (2) that the Facility has received or made arrangements for adequate grading and shaping materials for closure in compliance with the approved plans and this Consent Order; (3) that New Ventures is not aware of any circumstances that may result in the need to make a request to increase the amount of these materials or time to close the facility, subject to Paragraph 17 below; (4) New Ventures shall indicate the remaining time schedule for the approximate completion of grading and shaping; and (5) New Ventures shall indicate the time schedule for the final closure and capping of the facility.

This certification shall be signed by an official duly authorized by New Ventures to execute the certification; state the official's position or title; and include the following language: "I certify under the pains and penalty of perjury that I have personally examined the foregoing and am familiar with the information contained in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including fines and imprisonment."

17. In the event that circumstances arise that may result in the need for New Ventures to make a request to increase the amount of the grading and shaping materials for closure or an extension of time to close the Facility, New Ventures shall immediately notify the Department in writing. The notification shall describe in detail: (i) the reasons for requesting an increase in the amount of materials and/or extension of time; (ii) the anticipated amount of the increase in material and/or the length of the time extension; (iii) revisions to be made to the approved closure plan because of the need to increase materials and/or extend time to close the facility; (iv) any steps or measures taken or to be taken to prevent, avoid or minimize the increase in materials and/or length of the extension; and (v) a timetable by which New Ventures intends to implement any revisions in the approved plan and/or any such steps or measures. Upon receiving the approval of the Department, New Ventures shall implement such revisions to the approved plan and/or such steps or measures that are approved by the Department to prevent, avoid or minimize any further increase in materials and/or the extension of time.

18. New Ventures shall make available for review of the Department its records that support the quarterly certification. Without limitation, the following records shall be created and maintained in such a manner as to facilitate the Department's review:

- A. Amount of material received during the reporting period expressed in cubic yards and tons. The records shall contain the methodology used to arrive at a conversion factor - to convert the quantities of materials from tons to in-place cubic yards.
- B. Amount of revenue received during the reporting period per unit of volume for the acceptance of the material.
- C. Amount of revenue escrowed during the reporting period and total amount in escrow to be used for the purchase and installation of the approved final cover system.
- D. Amount of revenue expended during the reporting period for operation, maintenance, engineering and management at the site.
- E. Amount of revenue during the reporting period allowed for profit.
- F. Amount of revenue during the reporting period allowed for overhead.
- G. An estimate of the percentage of the project that has been completed.
- H. Documents relating to any issues that have the potential to delay the completion of the project.
- I. Delineation of compliance with the specific dates established in this ACO or of any permits or approvals issued as a result of applications filed pursuant to this ACO and documents confirming such compliance.

19. New Ventures agrees that it shall not request that the amount of material allowed by the approved plans and this ACO be increased without making available to the Department the information listed in paragraph 18A to I.

20. The Department hereby determines, and New Ventures hereby agrees, that the deadlines set forth above constitute reasonable times to perform the acts agreed to in this ACO and to come into compliance with the provisions cited in Part II above.

21. The actions required by this ACO are subject to approval by the Department and shall be performed in accordance with M.G.L. c. 111, §150A and M.G.L. c. 111, §150A1/2, and the regulations promulgated thereunder at 310 CMR 16.00 and 19.000, the Guidance Manual, Guideline and all other applicable federal, state and local laws, regulations and approvals.

22. If New Ventures violates this ACO, New Ventures shall pay stipulated civil administrative penalties to the Commonwealth in accordance with the following schedule:

For each day, or portion thereof, of each violation, New Ventures shall pay stipulated civil administrative penalties as follows:

<u>Period of Violation</u>	<u>Penalty per day</u>
<u>1st</u> through <u>15th</u> day	\$1,000 per day
<u>16th</u> through <u>30th</u> day	\$2,000 per day
<u>31st</u> day and thereafter	\$3,000 per day

Stipulated civil administrative penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day New Ventures corrects the violation or completes performance, whichever is applicable. Even if violations are simultaneous, separate penalties shall accrue for separate violations of this ACO. Stipulated civil administrative penalties shall accrue regardless of whether the Department has notified New Ventures of a violation or act of noncompliance. The payment of stipulated civil administrative penalties shall not alter in any way New Ventures' obligation to complete performance as required by this ACO.

All stipulated civil administrative penalties accruing under this ACO shall be paid within thirty (30) days of the date the Department sends a written demand therefor. If a court judgment is necessary to execute a claim for such stipulated penalties under this paragraph, New Ventures agrees to assent to the entry of such judgment. The stipulated civil administrative penalties set forth herein shall not preclude the Department from electing to pursue alternative remedies or alternative civil or criminal penalties which may be available by reason of New Ventures's failure to comply with the requirements of this ACO. In the event the Department collects alternative civil administrative penalties, New Ventures shall not be required to pay such stipulated penalties pursuant to this ACO.

23. New Ventures shall pay all stipulated penalties due under this ACO by certified check, cashier's check or money order payable to the Commonwealth of Massachusetts. New Ventures shall clearly print the name "New Ventures Associates, LLC", file number ACO-NE-01-4001, and New Ventures' Federal Employer Identification Number on the face of the payment, and shall mail it to:

Commonwealth of Massachusetts  
Department of Environmental Protection  
Commonwealth Master Lockbox  
P.O. Box 3584  
Boston, Massachusetts 02241-3584

New Ventures shall deliver a copy of the payment to:

Ms. Heidi M. O'Brien  
Deputy Regional Director for Waste Prevention  
Department of Environmental Protection  
Northeast Regional Office

205A Lowell Street  
Wilmington, Massachusetts 01887

In the event New Ventures fails to pay in full any stipulated penalty on or before the date due under this ACO, and in the manner and form required by this ACO, New Ventures shall pay to the Commonwealth three (3) times the amount of the stipulated penalty, together with costs, plus interest on the balance due from the time the civil administrative penalty became due and attorneys' fees, including all costs and attorneys' fees incurred in the collection thereof. The rate of interest shall be the rate set forth in M.G.L. c. 231, §6C.

24. New Ventures agrees to provide the Department, and the Department's employees, representatives and contractors, access at all reasonable times to the Facility for purposes of conducting any activity related to its oversight of this ACO. Notwithstanding any provisions of this ACO, the Department retains all of its access authorities and rights under applicable state and federal law.

25. For purposes of M.G.L. c. 21A, §16, and 310 CMR 5.00, this ACO shall serve as a Notice of Noncompliance for New Ventures's noncompliance with the requirements cited in Part II above.

26. This ACO shall not be construed as, or operate as, relieving New Ventures or any other person of the necessity of complying with all applicable federal, state and local laws and regulations.

27. This ACO may be modified only by written agreement of the parties hereto.

28. This ACO shall become effective on the date of the last signature set forth below.

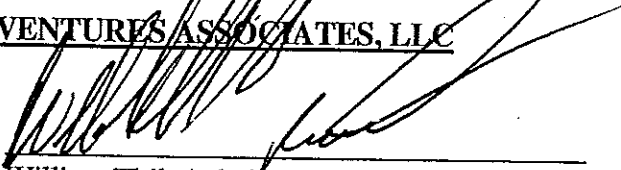
29. Each undersigned representative hereby certifies that he/she is fully authorized to enter into the terms and conditions of this ACO and to legally bind the party on whose behalf such representative is signing to this ACO.

30. All engineering work performed pursuant to this ACO shall be under the general direction and supervision of a qualified registered professional engineer. Any contractual relationship between New Ventures and the engineer to perform such services shall require the engineer, as a condition of the contract, to implement work consistent with the provisions of this ACO. New Ventures shall provide the Department with a copy of such contracts within thirty (30) days of written request by the Department. The Department shall not be deemed a party to any such contract and does not assume any liability under any such contract.

31. If any force majeure event occurs, New Ventures shall promptly notify the Department in writing upon the occurrence of such event. Such notice shall state the nature of the event, the anticipated length and cause of the delay, the measures taken or to be taken to avoid or minimize the delay, and the timetable for taking those measures. If a force majeure event occurs, the performance dates in question shall be extended for a period of time equal to the delay caused or contributed to by the force majeure event. For purposes of this ACO, the term "force majeure event" means any act or occurrence beyond the reasonable control of New Ventures and New Ventures' officers, employees, agents, and contractors, which

cannot be overcome by the exercise of due diligence, due care or foresight, having an adverse effect on the ability of New Ventures to comply with any provisions of this ACO. Financial inability and unanticipated or increased costs or expenses associated with the implementation of the actions called for by this ACO shall not be considered force majeure events. Failure to timely provide notice as required by this paragraph shall preclude New Ventures from asserting the defense provided by this paragraph.

NEW VENTURES ASSOCIATES, LLC

By: 

William Thibeault, President  
New Ventures Associates, LLC  
85-87 Boston Street  
Everett, Massachusetts 02149  
Telephone (617)387-1497  
Federal Employer Identification No. 36-4492639

Date: 2/20/03

DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: 

Heidi M. O'Brien, Deputy Regional Director  
Metropolitan Boston/Northeast Regional Office  
205A Lowell Street  
Wilmington, Massachusetts 01887  
Telephone (978) 661-7600

Date: 2/27/03