

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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**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**

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

slopes. It is thus critically important that the Landfill berm be constructed according to a MassDEP approved, safe and stable berm design. It is also critical that berm construction start as soon as possible; further delay will prevent completion of the Landfill's closure this year because some of the final closure work cannot start until the berm has been built.

MassDEP, with the assistance of its consultant, is prepared to make the necessary safety and stability design changes, and then contract to have the berm built according to the corrected design this summer or fall.

Berm construction must begin soon because the Landfill slide slopes in the northwest corner have begun to shift due to the inadequate support caused by the unfinished berm. The Landfill's cap has been stretched and stressed by the lack of stable support in this area. If the berm is not completed this summer or fall, increased stress could result in a further slumping or partial collapse of the Landfill's side slopes that could deposit contaminants into the abutting wetlands and cause the release of untreated Landfill gases containing highly toxic concentrations of hydrogen sulfide gas into the ambient air, threatening the health, safety and welfare of residents in surrounding neighborhoods.

New Ventures' persistent delays in fully and promptly responding to problems at the Landfill, its repeated claims that it lacks sufficient funds to carry out its Landfill closure and post-closure obligations, and its admission that it will not meet the closure deadlines in the Final Judgment, warrant supplementing the Default Order to declare that New Ventures has further breached its agreement and defaulted on its statutory obligations.

For all the reasons set forth in the memorandum and affidavits submitted in support of this motion, the Commonwealth respectfully requests that this Court supplement its March 30, 2010 Default Order by:

1. declaring that, pursuant to paragraph 6(a) of the trust agreement ("Trust Agreement") for the Landfill's financial assurance mechanism, New Ventures has further defaulted on its Landfill closure obligations and breached the Trust

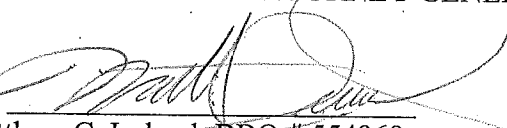
Agreement because it has failed to comply with the Final Judgment's requirements that it make necessary safety and stability modifications to the Landfill berm design and construction plan and then build the berm according to a MassDEP approved design;

2. declaring that New Ventures has further defaulted on its Landfill closure obligations because, by its own admission, will not meet the closure deadlines in the Final Judgment, including the May 30, 2010 deadline to construct the sand drainage layer and cover the entire Landfill with loam and grass seed, and the June 14, 2010 deadline to construct the Landfill stormwater control system;
3. declaring that, pursuant to the terms of paragraph 6(a) of the Trust Agreement, because New Ventures is in default, MassDEP is authorized to control and direct the use and disbursement of all remaining trust funds to reimburse contractors performing all further Landfill closure work, including making the necessary stability changes to the landfill berm design and then constructing the berm according to that design, constructing the sand drainage layer and placing loam cover and grass seed over the entire Landfill, and constructing the stormwater control system; and
4. any other relief the Court deems just and proper

The Commonwealth requests issuance of a summons for a short order hearing on this motion because the Landfill slide slopes in the northwest corner have begun to shift due to the inadequate support caused by the unfinished berm and berm construction must start and be completed soon according to a MassDEP approved plan. All of the requested relief is in the public interest because it addresses and remedies a threat to the public health and welfare.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS  
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