

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION NO. 06-0790 C

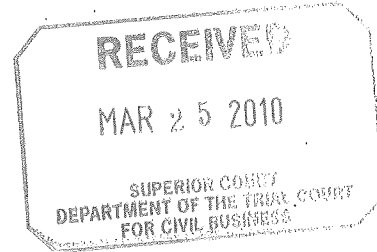
COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

NEW VENTURES ASSOCIATES, LLC,

Defendant.



**COMMONWEALTH'S EMERGENCY MOTION FOR ORDER GRANTING SITE ACCESS TO REPAIR LANDFILL DAMAGE, DECLARING THAT DEFENDANT IS IN DEFAULT, AND ORDERING DEFENDANT TO SUBMIT LANDFILL CLOSURE AND POST-CLOSURE COST ESTIMATES**

Pursuant to Superior Court Rule 9A(e)(1) and paragraph 27 of the Settlement Agreement and Final Judgment in the above captioned action entered on April 30, 2009 and amended by Orders of the court on May 27, 2009 and October 7, 2009 (the "Final Judgment"), the Commonwealth of Massachusetts (the "Commonwealth") hereby moves for issuance of a post-judgment order allowing the Massachusetts Department of Environmental Protection ("MassDEP") and its contractors to access the Crow Lane landfill ("Landfill") to perform critical repair work, including the replacement and repair of at least one and one half (1.5) acres of the Landfill's cap blown off during a recent storm. For more than three weeks, defendant New Ventures has failed to replace and repair the Landfill's cap. Despite the authority granted MassDEP under paragraph 27 of the Final Judgment to enter and fix damage to the Landfill's cap or gas control system in the event New Ventures fails to make the repairs itself, New Ventures has denied MassDEP access to the site.

The Commonwealth also requests issuance of a summons for a a short order hearing on this motion because the 1.5 acre opening in the Landfill's cap presents a threat to the public

health and welfare by increasing the risk and likelihood of the emission of noxious landfill gases and leachate.

For all the reasons set forth in the memorandum and affidavits submitted in support of this motion, the Commonwealth respectfully requests that this Court issue an order:

1. granting the MassDEP and its contractors access to the Landfill site for the purpose of repairing the damaged FML and gas extraction wells;
2. declaring that, pursuant to paragraph 6(a) of the trust agreement (“Trust Agreement”) for the Landfill’s financial assurance mechanism, New Ventures has defaulted on its Landfill closure obligations and breached the Trust Agreement because it cannot fund and perform the required repairs or any further closure work;
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; and
4. ordering that, pursuant to the Trust Agreement and 310 C.M.R. 19.051(2), New Ventures submit for MassDEP review and approval a revised closure and post-closure cost estimate that itemizes and clearly identifies the assumptions utilized in estimating the closure and post-closure costs and provides detailed data and information that supports and justifies the assumptions utilized in closure and post-closure cost estimates including, without limitation:
  - a. The length of time the LFG control system is proposed to operate;
  - b. The amount of pretreatment media that will be utilized including the purchase and disposal costs;
  - c. The amount and cost for the collection and disposal of condensate;
  - d. The cost of the maintenance and replacement of the pretreatment tanks;
  - e. The cost of the maintenance and replacement of the enclosed flare;
  - f. The labor cost to operate, maintain, and monitor the operation of the LFG control system;
  - g. The quantity and cost of propane as an auxiliary fuel for the enclosed flare;
  - h. The inspection and maintenance of the landfill cover including mowing, storm water controls, erosion repair, inspection and monitoring of the Berm stability including the MSE Wall (or Berm);

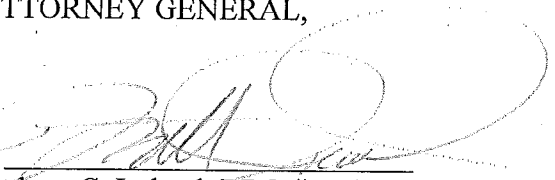
- i. The collection and disposal of leachate including the volume and disposal cost; and
- j. The itemized cost of conducting environmental monitoring of the Landfill including labor for sample collection and report preparation and the sample analytical costs.

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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Dated March 25, 2010