

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO. 06-0790 C

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

NEW VENTURES ASSOCIATES, LLC,

Defendant.

**JOINT MOTION BY THE PARTIES TO FILE AN ADDENDUM TO APPENDIX A
OF THE SETTLEMENT AGREEMENT ENTERED WITH THE FINAL JUDGMENT**

Pursuant to paragraph 39 of the settlement (“Settlement Agreement”) entered along with the Final Judgment ordered by the Court in this action on April 30, 2009, the Commonwealth of Massachusetts (the “Commonwealth”) and defendant New Ventures Associates, LLC (“New Ventures”) hereby jointly move that this Court allow the filing of a technical Addendum to Appendix A of the Settlement Agreement, as attached.

In support of this joint motion, the parties state that Appendix A to the Settlement Agreement sets forth the requirements for a geotechnical investigation of the Crow Lane landfill perimeter berm. The technical procedures and requirements for berm testing are set forth in the “Crow Lane Landfill Perimeter Berm Boring Protocol,” attached as Exhibit 1 to Appendix A. Early on, the field testing portion of this geotechnical investigation encountered a layer of silt and clay in some portions of the area around the perimeter berm and hard materials in parts of the berm. These two conditions can be best addressed with slight modifications to the drilling

and sampling protocol required by Appendix A of the Settlement Agreement. The original protocol set forth in Exhibit 1 to Appendix A will be followed and remains in full force and effect, except for the modifications in the attached Addendum, which the parties now jointly move be incorporated into Appendix A as a modification of the testing protocol in Exhibit 1.

Given the work required by the above modifications to the Perimeter Berm Geotechnical Investigation Protocol, the parties also jointly move to extend by four calendar days (two working weekdays) the performance time required by the Settlement Agreement and Final Judgment for completion of the "Field Work" required by Section I of Appendix A. Thus, the attached Addendum modifies paragraph 11(a)(i) of the Settlement Agreement and paragraph 12(a)(i) of the Final Judgment by requiring that New Ventures shall:

- (i) by no later than nineteen (19) days after entry of 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

In addition, the Addendum modifies paragraph 4 of the Settlement Agreement and paragraph 5 of the Final Judgment so that the Second Installment of \$20,000 is due no later than nineteen (19) days after entry of Final Judgment. The Addendum also modifies paragraph 5 of the Settlement Agreement and paragraph 6 of the Final Judgment by, per the above, extending the field work performance deadline so that if, by no later than nineteen (19) days after entry of Final Judgment, New Ventures has fully completed the requirements of Section I, Field Work, of the Perimeter Berm Geotechnical Investigation Protocol, the \$20,000 Second Installment shall be waived.

The Commonwealth and New Ventures state that this joint motion is in the public interest and should be allowed because it will ensure collection of boring samples and other information required for laboratory and other analysis of the landfill berm.

WHEREFORE, the parties respectfully request that this Court allow this joint motion and amend the Settlement Agreement by incorporating the attached Addendum into the testing protocol in Exhibit 1 of Appendix A.

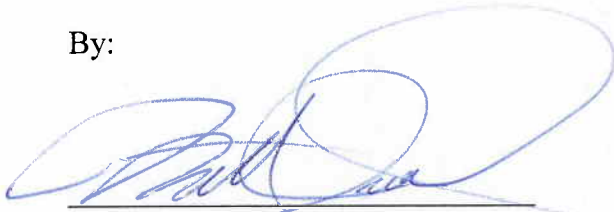
Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS NEW VENTURES ASSOCIATES LLC

MARTHA COAKLEY
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By its Counsel

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Dated: May 13, 2009

ADDENDUM

to

EXHIBIT 1: Crow Lane Landfill Perimeter Berm Boring Protocol

to:

APPENDIX A: PERIMETER BERM GEOTECHNICAL INVESTIGATION PROTOCOL

This Addendum modifies the Crow Lane Landfill Perimeter Berm Boring Protocol, Exhibit 1 to the Perimeter Berm Geotechnical Investigation Protocol attached as "Appendix A" and incorporated by reference into the Settlement Agreement executed on April 30, 2009 and filed together with the Final Judgment in *Commonwealth v. New Ventures Associates, LLC*, Suffolk Superior Court C.A. No. 2006-00790. The original protocol in Exhibit 1 to Appendix A (attached hereto) remains in full force and effect and shall be followed but with the below modified requirements:

A minimum of seven (7) borings located at the toe of the berm slope to complete verification of the silt and clay layer to be located:

- half way between TP2 and TP3,
- at TP 3,
- half way between TP3 and TP4,
- at TP 4,
- half way between TP4 and TP5,
- at TP5, and
- half way between TP5 and TP6

Should subsurface conditions change significantly, additional borings shall be installed at the toe of slope at 20 ft intervals per the original protocol. At least one Shelby tube sample shall be taken of a representative sample of clay from each boring for laboratory analysis per the requirements of the original protocol. After the Shelby tube sample has been taken, Split spoon samples will be taken every 10 feet through the remainder of the clay layer until competent material with a SPT N value of greater than 20 is encountered. Additional Split Spoon and Shelby tube samples will be taken where there is a change in material type per the requirements of the original protocol.

Where the berm structure was not determined by borings due to obstruction(s), it will be determined by excavating the height of the side slope where the obstruction(s) are encountered, to a minimum depth needed to confirm the berm structure. Samples of unsuitable material will be taken for laboratory analysis, per the requirements of the original protocol, and additional side slope excavations will be conducted if necessary as required by the original protocol (e.g. at 20 foot intervals).

The edge of waste under the berm between B4 and B5 will be identified by drilling through the berm at as close as is safely possible, at 40 foot intervals from B5 towards B4. If obstructions are encountered in the berm then the side slope will be excavated as described above. Additional

borings from B5 extending towards B6 along the berm will be installed in accordance with the requirements of the original protocol (e.g. at 20 foot intervals).

Given the work required by the above modifications to the Perimeter Berm Geotechnical Investigation Protocol, New Ventures shall complete the "Field Work" required by Section I of Appendix A by no later than Tuesday, May 19, 2009. This extends by four calendar days (two working weekdays) the performance time required by the Settlement Agreement and Final Judgment. Thus, this Addendum modifies paragraph 11(a)(i) of the Settlement Agreement and paragraph 12(a)(i) of the Final Judgment by requiring that New Ventures shall:

- (i) by no later than nineteen (19) days after entry of 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

In addition, this Addendum modifies paragraph 4 of the Settlement Agreement and paragraph 5 of the Final Judgment so that the Second Installment of \$20,000 is due no later than nineteen (19) days after entry of Final Judgment.

This Addendum also modifies paragraph 5 of the Settlement Agreement and paragraph 6 of the Final Judgment by, per the above, extending the field work performance deadline so that if, by no later than nineteen (19) days after entry of Final Judgment, New Ventures has fully completed the requirements of Section I, Field Work, of the Perimeter Berm Geotechnical Investigation Protocol, the \$20,000 Second Installment shall be waived.

APPENDIX A

Perimeter Berm Geotechnical Investigation Protocol

to the

Settlement Agreement executed on April 30, 2009 and filed together with the
Final Judgment in *Commonwealth v. New Ventures Associates, LLC*,
Suffolk Superior Court C.A. No. 2006-00790

APPENDIX A

PERIMETER BERM GEOTECHNICAL INVESTIGATION PROTOCOL

INTRODUCTION

This Perimeter Berm Geotechnical Investigation Protocol (“Geotechnical Investigation Protocol”) is attached as Appendix A to and incorporated by reference into the executed settlement (“Settlement Agreement”) between the Commonwealth of Massachusetts and New Ventures Associates LLC (“New Ventures”) executed on April 30, 2009 and filed in conjunction with the final judgment entered in *Commonwealth of Massachusetts v. New Ventures Associates, LLC*, Suffolk Superior Court, Civil Action No. 06-0790 C (“Final Judgment”). This Geotechnical Investigation Protocol specifies the procedures and protocols for the landfill perimeter berm geotechnical investigation required by paragraph 11(a) of the Settlement Agreement and paragraph 12(a) of the Final Judgment:

I. Field Work

New Ventures and its consultant, Geocomp Corporation of Boxborough Massachusetts (“Geocomp”) or other qualified consultant approved by MassDEP, shall complete the field work portion of the landfill perimeter berm geotechnical investigation in accordance with the field testing protocols and requirements in the “Sampling Protocol,” “Boring Completion,” “Test Pits” and “Additional Borings/Test Pits” sections of the “Crow Lane Landfill Perimeter Berm Boring Protocol,” attached as “Exhibit 1” to this Appendix A.

II. Laboratory Analysis

Following completion of the field work portion of the landfill perimeter berm geotechnical investigation, New Ventures shall have a Massachusetts certified laboratory perform any analysis of samples that may be required by the terms and criteria in Exhibit 1 in accordance with the “Testing Protocol” section of the attached Exhibit 1.

III. Design Verification and Geotechnical Report

Following completion of the geotechnical investigation field work and any laboratory analysis required by the terms and criteria in Exhibit 1, New Ventures shall submit for MassDEP approval a report prepared by Geocomp, or other qualified consultant approved by the MassDEP (the “Geotechnical Report”). The Geotechnical Report shall include an evaluation of the field work results and any required laboratory analysis, along with a determination of whether or not any modification to the MSE berm design plan in the Final CAD attached as Exhibit 2 to the Settlement Agreement is necessary based on the standards and criteria set forth in the “Design Verification” section of Exhibit 1.

IV. MSE Berm Design Modification

In the event that the Geotechnical Report, as approved by MassDEP, determines, in accordance with the Design Verification section of Exhibit 1, that a MSE berm design modification is necessary, New Ventures shall submit for MassDEP approval a MSE berm design modification plan, including a reasonable construction schedule, in accordance with the requirements of paragraph 11(a)(v) and (vi) of the Settlement Agreement.

EXHIBIT 1

Crow Lane Landfill Perimeter Berm Boring Protocol

EXHIBIT 1



Technologies to manage risk for infrastructure

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Crow Lane Landfill Perimeter Berm Boring Protocol

PURPOSE AND SCOPE

The purpose of the borings is to ascertain and verify the conditions and materials within and below the perimeter berm along the southwest and northwest portions of the berm. A boring location plan is attached.

SAMPLING PROTOCOL

The soils will be sampled at 6 boring locations as shown on the attached plan prepared by Sitec. Samples will be collected from each boring at 5 foot intervals through the berm to a depth of 2 feet above the expected base of the berm at. From this depth to refusal (defined in the following sections), the soils will be sampled continuously.

Sampling will be performed using the Split-barrel sampler used in conjunction with the Standard Penetration Test (SPT), as specified in ASTM D1586. The sampler will provide a disturbed sample representing the 2 foot length that the sampler is driven. The blows to insert the sample will be counted.

If no soil recovery is obtained the boring will be cleaned out and the sample will be retried immediately below the last attempt.

The boring will be started at the top of the berm by driving the sampler from 0 to 2 feet deep. The next sampling depths through the berm will typically be as follows

- Sample 1 0-2 feet
- Sample 2 3 -5 feet
- Sample 3 8 – 10 feet
- Sample... starting 2 feet above base of berm continuous 2 foot samples

Soils will be classified in the field using the Unified Soil Classification System (USCS) in accordance with ASTM D 2487.

If fine grained (defined by ASTM as soils containing more than 50% of the particles finer than the No. 200 Sieve) or organic soils are encountered then continuous sampling will be started using a Thin-Walled Shelby Tube sampler. In the field the decision to Shelby tube sample will be made based on visual inspection of the sample. The Shelby tube sampler will be pushed mechanically (not driven) for 2 feet to obtain undisturbed samples for laboratory testing. Continuous Shelby Tube sampling will continue until refusal or until coarse grained soils are encountered.

TESTING PROTOCOL

Laboratory Sieve Analysis (ASTM D422) will be run on samples from each distinctive layer. Each boring shall have a minimum of two sieve analyses, one from the berm materials and one from the foundation materials. Strength of coarse grained soils will be determined using standard methods using the SPT-N Values measured during the sampling. Strength of fine grained/organic soils (if encountered) will be determined from consolidated undrained laboratory triaxial compression tests (ASTM D4767) on Shelby tube samples.

BORING COMPLETION

The boring is complete when refusal is encountered below the base of the berm. Refusal shall be defined as >100 blows/foot on the SPT sampler. If refusal is encountered above the base of the berm then the hole shall be relocated 5 feet and drilled to the refusal depth before sampling, or advanced through the obstruction using drill bits.

TEST PITS

Test pits will be excavated opposite each boring at the base of the berm as shown in the attached location plan. Test pits will penetrate through the top soils and loamy soils through any underlying fine/organic soils. If fine/organic soils are encountered Shelby tube samples will be collected by pushing the tubes with the excavator bucket.

ADDITIONAL BORINGS/TEST PITS

If fine grained/organic soils are encountered in a boring and/or test pit, an additional boring and test pit will be located 20 feet on either side. If the additional boring and/or test pit encounters fine grained soils, then the process is repeated 20 feet further away until the extent of the fine grained/organic strata is defined. Provided, should the fine grained/organic soil be found only in the test pits, and the test pits clearly demonstrate the fine grained/organic soil does not extend under the berm, additional borings may be omitted.

DESIGN VERIFICATION

The design assumes dense coarse-grained soils within the berm. The conditions and SPT blows observed in the samples in the top portions of the berm should be representative of the design assumptions, and should be consistent throughout the depth of the berm. Below the berm the design assumption is a soil strength represented by a friction angle of 35 degrees. This corresponds to a coarse-grained soil with SPT blow counts greater than 12. Should fine grained soils/organic be encountered the strength will be measured by performing laboratory strength tests. If the strengths are less than those assumed in the design calculations, the calculations will be updated using the revised strengths. Design modifications will only be required if the computed factor of safety is less than 1.30. Should a design modification be required it is most likely to include the removal of the weak soils in the area of the expansion and the base of the berm.

