



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
NORTHEAST REGIONAL OFFICE

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CERTIFIED MAIL

July 10, 2007

Richard A. Nylén Jr., Attorney at Law
Lynch, DeSimone & Nylén, LLP
12 Post Office Square
Boston, MA 02109

Re: NEWBURYPORT – Solid Waste/COR
Crow Lane Landfill
FMF # 39545
RTN # 3-26918
Extension Request Denial
Notice of Response Action
Notice of Intent Standby Trust

Dear Attorney Nylén:

The Massachusetts Department of Environmental Protection ("MassDEP") is in receipt of your correspondence, dated July 9, 2007, in which you request an extension to respond to the notices dated July 2, 2007, from the MassDEP relative to the Crow Lane Landfill ("Landfill") in Newburyport, Massachusetts. The first notice is a Notice of Responsibility and Notice of Response Action ("NORA") issued to New Ventures Associates, LLC ("New Ventures") and to William Thibeault ("Thibeault") by the MassDEP pursuant to M.G.L. c. 21E and 310 CMR 40.0000, the Massachusetts Contingency Plan. The second notice ("Notice of Intent") is a notice issued to New Ventures by the MassDEP pursuant to Paragraph 6 of the October 20, 2003 Standby Trust Agreement between New Ventures, the MassDEP, and U.S. Bank National Association (the "Trustee") of MassDEP's intent to notify the Trustee pursuant to the Standby Trust Agreement of New Ventures' failure to conduct necessary closure and/or corrective action activities at the Landfill. The MassDEP notes that neither the Notice of Intent nor the Standby Trust Agreement requires New Ventures to provide a response; accordingly, the Notice of Intent does not specify a timeframe or schedule for a response from New Ventures.

Your July 9, 2007 extension request, submitted on behalf of New Ventures and Thibeault, requests an extension of the Interim Deadline established in the July 2, 2007 NORA, from July 16, 2007 to July 23, 2007. MassDEP hereby denies your request.

The Department's NORA requires New Ventures and Thibeault to address several response actions. Specifically, item (1) of the NORA addresses the Landfill Gas System, item (2) addresses Leachate Control and item (3) addresses Capping and Closure of the Landfill. Be advised that, if New Ventures and/or Thibeault choose to perform the Response Actions described in the July 2, 2007 NORA in lieu of

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MassDEP, New Ventures and Thibeault must still provide MassDEP the following items by 5:00 p.m. on July 16, 2007:

- 1) A signed agreement with a Licensed Site Professional (LSP) and Massachusetts Registered Professional Engineer experienced in solid waste landfill construction and closure;
- 2) A written plan describing in detail the measures New Ventures and/or Thibeault will take to complete each response action listed above, eliminate substantial hazards presented by the Landfill and achieve a level of No Significant Risk and close the landfill in accordance with 310 CMR 40.0000 and 310 CMR 19.000;
- 3) A timetable for conducting the Response Actions and Landfill closure required herein; and
- 4) Based upon recent verbal statements of Thibeault that he and/or New Ventures are financially unable to complete closure of the Landfill in a manner which will eliminate the hazards presented by the Landfill, provide written assurance, beyond that which is covered by the existing Financial Assurance Mechanism ("FAM") applicable to the Landfill, that New Ventures and/or Thibeault have sufficient financial resources to timely complete each of the Response Actions and Landfill closure as required by 310 CMR 40.0170(6). Such written assurance shall include, but is not limited to, the following records and documents: an accounting of all funds received by New Ventures, LLC and/or Thibeault regarding the Landfill; audited and unaudited financial statements; federal and state tax returns for the three (3) most recent tax years; bills of lading for materials sent to the Landfill; and contracts for tipping fees and gate slips for New Ventures, LLC and William Thibeault. The written assurance provided by New Ventures, LLC and William Thibeault shall include all of their successors, assigns, affiliates and entities controlled by them or under their control.

The July 2, 2007 NORA established July 16, 2007 as an Interim Deadline [310 CMR 40.0167] by which New Ventures and Thibeault must respond in writing whether or not they intend to take the Response Actions.

Based on your telephone conversations with Assistant Attorney General Matthew Ireland of the Attorney General's Office on Friday, July 6, 2007, MassDEP understands that New Ventures is attempting to address some of the required response actions. New Ventures is reportedly:

- Proceeding with the installation of landfill gas extraction wells EW-7, EW-10 and EW-13 and the completion of the landfill gas header loop. The MassDEP previously authorized this work in an email to you dated, June 27, 2007.
- Proceeding to re-anchor and seal the FML and Geocomposite gas vent blanket along the northwest and west portions of the perimeter berm; and
- Attempting to find and place a suitable low permeability soil as a temporary cap in the Phase IA Area of the Landfill.

With regards to the re-anchoring and sealing of the FML and Geocomposite gas vent blanket, as you are aware, during an inspection of the Landfill on Friday, July 6, 2007 a MassDEP representative observed a significant breakout of hydrogen sulfide in an area on the northwest portion of the perimeter berm where the FML, Geocomposite, and anchor trench had been left exposed after work had concluded at the landfill for the day. Leaving the landfill in such a condition and creating such a release of hydrogen sulfide are violations of the air quality, nuisance and landfill operating requirements of 310 CMR 7.00 *et seq.* and 310 CMR 19.000 *et seq.* Assistant Attorney General Ireland informed you of the problem and directed that New Ventures immediately take measures to cover the exposed area and mitigate the release of landfill gas and associated hydrogen sulfide ("H₂S"). At approximately 7:40 PM on Friday, July 6, 2007,

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you informed Assistant Attorney General Ireland by email and telephone and Mr. John Carrigan of the MassDEP by email, that Mr. Ethan Owen of New Ventures had covered the exposed area.

During his telephone conversations with you on Friday, July 6, 2007 regarding this event, Assistant Attorney General Ireland informed you, and you acknowledged, the MassDEP's position that the re-anchoring and sealing of the FML and Geocomposite gas vent blanket must be conducted under the direct supervision and field oversight of New Ventures' consultant, SITEC Environmental, Inc. ("SITEC") of Marshfield, Massachusetts (that is, a representative of SITEC is present at all times when the work is being performed) in order to ensure:

- The work is performed properly including, without limitation the proper anchoring of the FML and Geocomposite in the anchor trench and the use of a backfill material that meets the design specifications (Note - the asphalt grindings have not been demonstrated to meet this standard);
- The work is completely and properly documented; and
- A qualified engineer is at the Landfill to address conditions encountered in the field as the work is performed, implement measures designed to control and mitigate the release of landfill gas and H₂S, protect workers and others at the Site from exposure to landfill gas and H₂S, and prevent or mitigate the potential for off-site hydrogen sulfide odors and actual impacts on site workers and off-site areas.

Therefore, the Department and Assistant Attorney General Ireland expect that all such response actions will be properly supervised and documented from this point on.

If (a) New Ventures and/or Thibeault fail to notify MassDEP that they intend to perform the work as stated in the July 2, 2007 NORA, (b) their response is inadequate or incomplete, or (c) they fail to undertake the necessary response actions in accordance with the MCP, MassDEP reserves its rights to perform the necessary response actions and take appropriate legal action against New Ventures and/or Thibeault, including cost recovery activities.

This letter does not limit or in any way preclude the Department's ability to initiate appropriate enforcement actions for any failure by New Ventures to comply with any applicable regulations or the Preliminary Injunction entered on October 20, 2006 in Suffolk Superior Court, Civil Action No. 06-0790 C, as amended by order of the Court on November 1, 2006 and February 22, 2007.

Please feel free to contact MassDEP counsel Michael W. Dingle by telephone at (617) 292-5959 if you have any questions regarding this letter.

Sincerely,

**This final document copy is being provided to you electronically by the
Massachusetts Department of Environmental Protection.**

**A signed copy of this document
is on file at the DEP office listed on the letterhead.**

Richard J. Chalpin
Regional Director

CERTIFIED MAIL: 7006 2760 0005 3984 3255

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Cc: John Morris, Director, City of Newburyport, Health Department, 60 Pleasant Street, Newburyport, MA 01950; Email Address: JMorris@CityofNewburyport.com

John A Carrigan, MassDEP/NERO/BWP-SW

Matthew Ireland, Office of the Attorney General, Boston, MA

Traci Peters, City of Newburyport, Conservation Commission, 60 Pleasant Street, Newburyport, MA 01950; Email Address: tpeter@cityofNewburyport.com

U.S. Bank National Association, Corporate Trust Services, One Federal Street, 3rd Floor, Boston, MA 02110; Attention: Chi C. Ma

Mr. William Thibeault, President, New Ventures Associates, LLC; 85-87 Boston Street; Everett, Massachusetts 02149

Michael Quatromoni; SITEC Environmental, Inc.; 769 Plain Street, Unit C; Marshfield, MA 02050

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