

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
SUFFOLK SUPERIOR COURT

Suffolk, ss

COMMONWEALTH OF MASSACHUSETTS,
Plaintiff

V.

NEW VENTURES ASSOCIATES, LLC,
Defendant

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CA # SUCV2006-00790

EXHIBIT "G"



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

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CERTIFIED MAIL

March 3, 2010

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

Re: NEWBURYPORT – Solid Waste/COR
Crow Lane Landfill
FMF #39545
**DENIAL of MSE Berm Design
Modification**

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

Dear Mr. Thibeault and Mr. Nysten:

The Massachusetts Department of Environmental Protection, Northeast Regional Office, Bureau of Waste Prevention, Solid Waste Management Section ("MassDEP") has reviewed the revised design plans for the construction of the perimeter berm, including the mechanically stabilized earthen berm ("MSE berm") at the Crow Lane Landfill, Crow Lane, Newburyport, Massachusetts. The modified design plans, dated August 26, 2009, were prepared on behalf of New Ventures Associates, LLC ("New Ventures" or "you" or "your") by SITEC Environmental, Inc. of Marshfield, Massachusetts ("SITEC"), and include a structural analysis prepared by GEOCOMP Corporation of Boxborough, Massachusetts ("GEOCOMP"). New Ventures submitted the revised plans to MassDEP pursuant to paragraph 12.a.(v) of the Settlement Agreement and the Final Judgment in *Commonwealth v. New Ventures Associates, LLC*, Suffolk Superior Court C.A. 06-0790 C, as amended by Orders of the court on May 27, 2009 and October 7, 2009 (the "Final Judgment").

MassDEP has determined that you have failed to submit an approvable modified plan and adequately address the deficiencies cited in MassDEP's October 6, 2009 Notice of Deficiency, and, as a result, New Ventures has failed to comply with paragraph 12.a.(v) of the Final Judgment in that the MSE berm design modification plan has not been demonstrated to meet the

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required safety factor of 1.30. MassDEP, therefore, denies the modified berm design plan as proposed.

The modified berm design is included as part of the Corrective Action Design plans prepared and submitted to MassDEP on behalf of New Ventures by SITEC, including but not limited to revisions through August 26, 2009 ("August 2009 Modified Design Plans"), titled:

Corrective Action Design (CAD)
Final Landfill Closure
For Crow Lane Landfill
Newburyport, Massachusetts
March 17, 2006

The berm is proposed to buttress and stabilize the mound of solid wastes, including construction and demolition debris processing residuals and fines ("C&D residuals and fines"¹), used in the grading and shaping of the landfill. The berm as proposed consists of a soil gravity berm ("earthen berm") surrounding the landfill, with a MSE berm (aka reinforced earth wall) on top of the soil gravity berm on the westerly side of the landfill and portions of the southerly and northerly sides of the landfill. Sections of the soil gravity berm as proposed would be stabilized by rock fill buttresses.

Paragraph 12.a.(v) of the Final Judgment required in part that within twenty-five (25) days of New Ventures receiving notice from MassDEP approving the Geotechnical Report, required by paragraph 12.a.(iii) of the Final Judgment, New Ventures shall submit to MassDEP for review and approval a MSE berm design modification plan with a safety factor of no less than 1.30. The Geotechnical Report, dated June 16, 2009 and titled: "Report on Additional Geotechnical Field and Laboratory Investigations, Crow Lane Landfill, Newburyport, Massachusetts", was prepared on behalf of New Ventures by GEOCOMP. GEOCOMP concluded in the Geotechnical Report that:

- The proposed berm design incorporated in the Final Judgment on April 30, 2009 was appropriate provided that the organic zone encountered within the northwest portion of the existing earthen berm was removed or stabilized in-situ; and that relatively thin, loamy and organic soils encountered on the surface at the toe of the existing earthen berm in the berm extension/buttress areas are removed prior to placement of the compacted granular fill;
- The berm was expected to experience some settlement due to consolidation of the silt/clay stratum under the weight of the future MSE berm and that modifications to the surface drainage features along the top of the berm were required to accommodate the future settlement; and
- At a minimum, a revision of the berm design plan was required to address the organic material found within the northwest portion of the earthen berm (that is, did not meet the required safety factor of 1.30).

¹ The C&D residuals and fines were generated at Wood Waste of Boston, 85-87 Boston Street, Everett, Massachusetts, FMF Facility Number 328983.

The presence of a thick silt and clay stratum raised issues of constructability not only in the section AA analyzed in the Geotechnical Report, but also in other areas, including the stone buttresses at the base of the berm. As New Ventures' technical consultants acknowledged in July 2009, the assumptions underlying the earlier geotechnical reports had changed due to the thick silt and clay stratum encountered on the west and northwest side of the Landfill and the organic material found within the northwest portion of the existing earthen berm. The changes raised issues regarding the post construction effects of settlement on the MSE wall's stability as indicated in the Geotechnical Report and whether the proposed berm design met the required safety factor of 1.30.

On July 24, 2009, MassDEP conditionally approved the Geotechnical Report, concurring that a modification of the MSE berm design was required and that New Ventures must submit pursuant to paragraph 12.a.(v) for review and approval by MassDEP a MSE berm design modification plan with a safety factor of no less than 1.30. MassDEP's approval required that the MSE berm design modification plan include a complete geotechnical/structural analysis that fully addressed all relevant physical conditions at the site including, without limitation the clay and silt stratum and the organic material.

In response, New Ventures submitted the August 2009 Modified Design Plans including a geotechnical/structural analysis by GEOCOMP, dated August 20, 2009, titled "*Report on Additional Geotechnical Analysis Crow Lane Landfill Newburyport, Massachusetts*". The "August 2009 Modified Design Plans" proposed in part deletion of the MSE berm along the easterly two thirds of the southerly (Crow Lane) side of the landfill, addition of a stone buttressed slope at the westerly end of the northerly side of the landfill, as well as alterations to the landfill access and storm water drainage.

On October 6, 2009, MassDEP issued a Notice of Deficiency to New Ventures citing several issues, including missing and incomplete information, which were not adequately addressed by the "August 2009 Modified Design Plans" or the GEOCOMP's August 2009 report. The notice included a copy of comments on the design plans and geotechnical/structural analysis prepared by MassDEP's technical consultant.

On October 22, 2009, GEOCOMP submitted a letter report (the "Letter Report") to MassDEP on behalf of New Ventures in response to MassDEP's October 6, 2009 Notice of Deficiency to New Ventures. GEOCOMP, proposed in part in the Letter Report to monitor the performance of the northwestern portion of the MSE berm during and following construction. However, GEOCOMP has not proposed any standards for evaluating the berm performance, or specific modifications to the berm design for the proposed monitoring of the berm's stability. In addition, GEOCOMP has not documented that the design of the proposed rock fill buttresses meets the guidelines referenced in the Letter Report including, without limitation, the "*FHWA-CFL/TD-06-006 Rockery Design and Construction Guidelines, November 2006*".

The Letter Report does not adequately address MassDEP's October 6, 2009 Notice of Deficiency. The supporting geotechnical analysis provided by GEOCOMP does not sufficiently justify the assumptions relative to the strength of the clay underlying the berm or the settlement

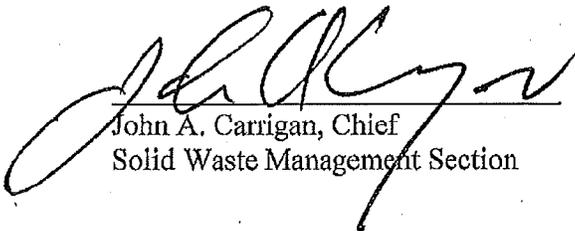
of the organic layer within the berm. Therefore, the analysis you submitted does not demonstrate that the modified berm design as proposed in the August 2009 Modified Design Plans, including the MSE berm portion, meets the required safety factor of 1.30.

As stated above, New Ventures has failed to comply with paragraph 12.a.(v) of the Final Judgment. Pursuant to paragraph 6(a) of the Corrective Action Standby Trust Agreement, MassDEP reserves the right to upon notification to the Trustee as required by the Trust Agreement and 310 C.M.R. 19.051 draw funds against the Trust Fund Property for any actions conducted by MassDEP, for your failure to conduct the closure and corrective action activities described above.

This decision is provided by email pursuant to Section 26 of the Final Judgment and by certified mail.

If you have any questions regarding this denial please contact me at (978)694-3299.

Sincerely,



John A. Carrigan, Chief
Solid Waste Management Section

JAC/RJC/DCA/dca

Certified Mail Number 7009 2250 0001 5078 7032 W. Thibeault

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