

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION NO. 06-0790 C

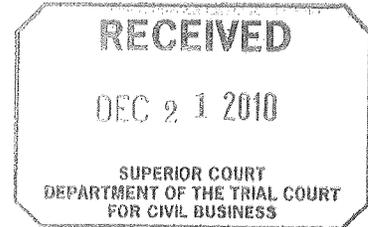
COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

NEW VENTURES ASSOCIATES, LLC,

Defendant.



**JOINT MOTION BY THE PARTIES TO FILE A REVISED EXHIBIT 2 TO THE FINAL CAD APPENDED TO THE SETTLEMENT AGREEMENT, A NEW EXHIBIT TO APPENDIX A OF THE SETTLEMENT AGREEMENT, AND TO REVISE TWO PARAGRAPHS IN THE FINAL JUDGMENT**

Pursuant to paragraph 39 of the settlement (“Settlement Agreement”) entered along with the Final Judgment ordered on April 30, 2009 by the Court in this action, the Commonwealth of Massachusetts (the “Commonwealth”) and defendant New Ventures Associates, LLC (“New Ventures”) hereby jointly move that this Court allow the filing of technical revisions to Corrective Action Design Plan Sheets (the “Revised Plan Sheets”) attached as Exhibit A to the Crow Lane landfill Final Corrective Action Design Plan (“Final CAD”) appended to the Settlement Agreement. In addition, the parties jointly move to add a new Exhibit 3, “Landfill Berm Construction, Wetlands Restoration and Replication Requirements and Protocol,” to Appendix A of the Settlement Agreement. Finally, the parties jointly move that the Court allow a revision to paragraph 11 (d) of the Settlement Agreement and paragraph 12 (d) of the Final Judgment, and the addition of new language to paragraph 27 of the Settlement Agreement and Final Judgment.

In support of this joint motion, the parties state that these plan sheet revisions became

necessary because New Ventures proposed to improve and simplify construction of a portion of the landfill berm by reducing the height of the berm along Crow Lane, shortening the length of the landfill access road and eliminating the MSE Berm. As part of this design revision, New Ventures proposed to extend placement of the flexible membrane liner (“FML”) cap through the drainage channel along the inside edge of the berm in order to improve storm water control. The Massachusetts Department of Environmental Protection (“MassDEP”) approved these design improvements, and the revisions are incorporated in fourteen (14) oversized Revised Plan Sheets that replace the original design plan sheets attached as Exhibit A to the Final CAD in the Settlement Agreement. In addition, MassDEP approved a new Technical Specifications and Construction Quality Assurance Plan (“CQA Plan”), which replaces the Construction Quality Assurance Plan attached to the Final CAD, as well as a slope stability analysis by McPhail Associates dated October 26, 2010, which includes a plan for monitoring berm slope stability. Thus, the parties respectfully move that the Court allow this joint motion to replace Exhibit A to the Final CAD with the newly revised Exhibit A submitted with this motion, consisting of the fourteen (14) Revised Plan Sheets and a new “Index of Plan Sheets” cover sheet, the replacement of the current Construction Quality Assurance Plan attached to the Final CAD with the attached CQA Plan, and the attachment of the October 26, 2010 McPhail slope stability analysis as a new Exhibit 2 to Appendix A of the Settlement Agreement.

Because these berm design improvements involved some impact to the wetlands adjacent to the north and west side of the Landfill, the parties also jointly move to add a “Landfill Berm Construction, Wetlands Restoration and Replication Requirements and Protocol,” as a new Exhibit 3 to Appendix A of the Settlement Agreement. This Exhibit 3, attached, is necessary in

order to establish requirements, criteria, construction protocols and deadlines for installation of the sand drainage layer and placement of the loam and seed on top of the FML and construction and monitoring of wetlands restoration and replications areas.

Because of these berm design revisions, the parties also jointly move to extend the performance deadline for sand drainage layer construction and loam and seed placement for the Phase I and Phase II Areas of the landfill required by paragraph 11 (d) of the Settlement Agreement and paragraph 12 (d) of the Final Judgment, and to set a deadline for New Ventures' submission for MassDEP approval of a final design plan for storm water basin 1. This extension is required because the FML must be extended through the drainage channel along the inside edge of the berm on the northern and eastern sides of the Phase I Area prior to placement of the sand drainage and loam and seed layers, which work must now wait until next spring. The attached Addendum modifies paragraph 11 (d) of the Settlement Agreement and paragraph 12 (d) of the Final Judgment by requiring that New Ventures shall:

- (d) (i) by no later than two (2) years and thirty (30) days after entry of Final Judgment, complete construction of the sand drainage layer and the placement of loam and seed over the FML cap installed and in place in the areas identified as Phase I and Phase II in the Landfill Closure Phase Plan in accordance with the requirements in the Final CAD;
- (ii) by no later than December 31, 2010, submit for Department review and approval a revised design plan for the completion of storm water basin 1 that includes, but is not limited to, design revisions necessitated by the creation of the sump in the western portion of storm water basin 1 by the prior removal of bedrock. The revised design plan shall include the final design details, specifications, and CQA requirements for storm water basin 1. The revised design plan shall also include the final storm water calculations documenting that the revised design meets the performance standards, including, but not limited to, management of the 100 year storm and the requirements for the discharge of storm water to the vernal pool and the wetlands adjacent to the western end of the Landfill. In demonstrating that the revised design plan meets the performance standards, New Ventures shall utilize either a conservative estimate of the

dimensions of the basin sump or an actual topographic survey of the basin. The revised design plan shall also include the revision of Sheet 3 of the Final CAD to reflect the removal of the head wall from the detail for the Culvert Crossing to storm water basin 1 as shown on Sheet 7 of the Final CAD; the detail for the access road both at the culvert and within the Landfill; and the detail for the energy dissipater at the outfall of storm water basin 1;

(iii) by no later than December 31, 2010, submit for Department review and approval a protocol for a supervised and managed blasting program for completing the removal of bedrock within the remaining area of storm water basin 1 to the approved design elevation of 44.5 feet. The protocol shall meet the requirement set forth in Exhibit 2 to Appendix F of the Settlement Agreement.

Loam placement and seeding of the entire landfill will take place when weather permits next spring.

Finally, the parties jointly move to amend the language in paragraph 27 of the Settlement Agreement and Final Judgment by replacing the current paragraph 27 with the following:

27. The Department and its contractors shall have the right to access the Site at any time and without notice to: respond to odor complaints; conduct inspections; take air quality readings, leachate samples, or other samples; secure the continued installation and full operation of the LFG Pretreatment System in the event that the LFG Pretreatment System has been removed, disabled, or otherwise fails, or if New Ventures has abandoned or stopped operating the LFG Pretreatment System; secure the continued installation and full operation of the enclosed flare, including, without limitation, all piping, gas collection systems, propane tanks, and other components required to operate the enclosed flare; secure the continued construction, completion, stability, integrity, and/or construction monitoring of the Landfill perimeter berm in accordance and compliance with the requirements of the Final CAD in the event that New Ventures has stopped and refused to resume or abandoned any construction or post-construction monitoring required by the Final Judgment and Final CAD for any portion of the Landfill perimeter berm; secure the continued construction, completion and functioning of storm water basin 1 and any discharge structures related to storm water basin 1 in accordance and compliance with the requirements of the Final CAD in the event

that NVLLC has stopped and refused to resume or abandoned any construction of storm water basin 1 or any of its related discharge structures; and otherwise inspect the Site or monitor activity to ensure compliance with all terms, conditions, and requirements of this Final Judgment and the Settlement Agreement, as well as with any other applicable administrative enforcement orders issued by the Department. The Department and its contractors shall have the right to access the Site at any time and without notice to take actions necessary to control leachate releases, pump leachate tanks, remove leachate released to wetlands, and otherwise correct any leachate management violations if New Ventures has not returned to full compliance with the leachate management requirements of Appendix E to the Settlement Agreement, Leachate Control Plan, within seventy-two (72) hours of notice from the Department. The Department and its contractors shall also, within seventy-two (72) hours of notice by the Department, have the right to access the Site at any time to take actions necessary to: (i) assure that the landfill gas system, including, without limitation, the LFG Pre-treatment System, the enclosed flare, and gas collection system, is operating in full compliance with the performance standards in Appendix B to the Settlement Agreement; (ii) patch, repair, or extrusion weld any FML rips, tears, seam openings or other damage; (iii) cover, patch, or otherwise mitigate any breakouts of hydrogen sulfide or other Landfill gases from the Landfill surface; or (iv) place cover over Active or Inactive Areas of the Landfill in order to assure compliance with the requirements of Sections B and C of Appendix C to the Settlement Agreement, Landfill Cover Protocol. The Department also retains all rights of access to the Site under applicable state and federal law.

The Commonwealth and New Ventures state that this joint motion is in the public interest and should be allowed because it will ensure final capping and closure of the Crow Lane landfill in accordance with the Final CAD approved by MassDEP.

WHEREFORE, the parties respectfully request that this Court allow this joint motion and amend the Settlement Agreement by replacing the original Exhibit A to the Final CAD with the new Exhibit A consisting of fourteen (14) Revised Plan Sheets and a new Index of Sheets. In

addition, the parties jointly move to add a new Exhibit 2 and Exhibit 3 to Appendix A of the Settlement Agreement in the form attached to the Addendum to this motion. Finally, the parties also request that the Court allow this motion and replace paragraph 11 (d) of the Settlement Agreement and paragraph 12 (d) of the Final Judgment and replace paragraph 27 of the Settlement Agreement and Final Judgment with the new language quoted above and appended to this motion.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS      NEW VENTURES ASSOCIATES LLC

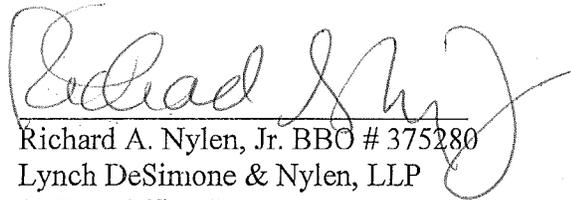
MARTHA COAKLEY  
ATTORNEYGENERAL,

By its Counsel

By:



Matthew C. Ireland, BBO # 554868  
Assistant Attorney General  
Environmental Protection Division  
One Ashburton Place  
Boston, Massachusetts, 02108  
617-727-2200, ex. 2434



Richard A. Nylan, Jr. BBO # 375280  
Lynch DeSimone & Nylan, LLP  
12 Post Office Square  
Boston, Massachusetts 02109  
617-348-4500

Dated: December 21, 2010

## ADDENDUM

The Court's Order allowing the foregoing joint motion to amend the Settlement Agreement and Final Judgment entered by the Court on April 30, 2009 in this action, *Commonwealth of Massachusetts v. New Ventures Associates, LLC*, Suffolk Superior Court, C.A. No. 06-0790 C, replaces the Paragraph 11 (d) of the Settlement Agreement and paragraph 12 (d) of the Final Judgment with the following replacement language:

### **Settlement Agreement:**

11. (d) (i) by no later than two (2) years and thirty (30) days after entry of Final Judgment, complete construction of the sand drainage layer and the placement of loam and seed over the FML cap installed and in place in the areas identified as Phase I and Phase II in the Landfill Closure Phase Plan in accordance with the requirements in the Final CAD;
- (ii) by no later than December 31, 2010, submit for Department review and approval a revised design plan for the completion of storm water basin 1 that includes, but is not limited to, design revisions necessitated by the creation of the sump in the western portion of storm water basin 1 by the prior removal of bedrock. The revised design plan shall include the final design details, specifications, and CQA requirements for storm water basin 1. The revised design plan shall also include the final storm water calculations documenting that the revised design meets the performance standards, including, but not limited to, management of the 100 year storm and the requirements for the discharge of storm water to the vernal pool and the wetlands adjacent to the western end of the Landfill. In demonstrating that the revised design plan meets the performance standards, New Ventures shall utilize either a conservative estimate of the dimensions of the basin sump or an actual topographic survey of the basin. The revised design plan shall also include the revision of Sheet 3 of the Final CAD to reflect the removal of the head wall from the detail for the Culvert Crossing to storm water basin 1 as shown on Sheet 7 of the Final CAD, the detail for the access road both at the culvert and within the Landfill, and the detail for the energy dissipater at the outfall of storm water basin 1;
- (iii) by no later than December 31, 2010, submit for Department review and approval a protocol for a supervised and managed blasting program for completing the removal of bedrock within the remaining area of storm water basin 1 to the approved design elevation of 44.5 feet. The protocol shall meet the

requirement set forth in Exhibit 2 to Appendix F of the Settlement Agreement.

**Final Judgment:**

12. (d) (i) by no later than two (2) years and thirty (30) days after entry of Final Judgment, complete construction of the sand drainage layer and the placement of loam and seed over the FML cap installed and in place in the areas identified as Phase I and Phase II in the Landfill Closure Phase Plan in accordance with the requirements in the Final CAD;
- (ii) by no later than December 31, 2010, submit for Department review and approval a revised design plan for the completion of storm water basin 1 that includes, but is not limited to, design revisions necessitated by the creation of the sump in the western portion of storm water basin 1 by the prior removal of bedrock. The revised design plan shall include the final design details, specifications, and CQA requirements for storm water basin 1. The revised design plan shall also include the final storm water calculations documenting that the revised design meets the performance standards, including, but not limited to, management of the 100 year storm and the requirements for the discharge of storm water to the vernal pool and the wetlands adjacent to the western end of the Landfill. In demonstrating that the revised design plan meets the performance standards, New Ventures shall utilize either a conservative estimate of the dimensions of the basin sump or an actual topographic survey of the basin. The revised design plan shall also include the revision of Sheet 3 of the Final CAD to reflect the removal of the head wall from the detail for the Culvert Crossing to storm water basin 1 as shown on Sheet 7 of the Final CAD, the detail for the access road both at the culvert and within the Landfill, and the detail for the energy dissipater at the outfall of storm water basin 1;
- (iii) by no later than December 31, 2010, submit for Department review and approval a protocol for a supervised and managed blasting program for completing the removal of bedrock within the remaining area of storm water basin 1 to the approved design elevation of 44.5 feet. The protocol shall meet the requirement set forth in Exhibit 2 to Appendix F of the Settlement Agreement.

In addition, the Court's order allowing the parties' foregoing joint motion to amend replaces Paragraph 27 of the Settlement Agreement and Final Judgment with the following replacement language:

27. The Department and its contractors shall have the right to access the Site at any time and without notice to: respond to odor complaints; conduct inspections;

take air quality readings, leachate samples, or other samples; secure the continued installation and full operation of the LFG Pretreatment System in the event that the LFG Pretreatment System has been removed, disabled, or otherwise fails, or if New Ventures has abandoned or stopped operating the LFG Pretreatment System; secure the continued installation and full operation of the enclosed flare, including, without limitation, all piping, gas collection systems, propane tanks, and other components required to operate the enclosed flare; secure the continued construction, completion, stability, integrity, and/or construction monitoring of the Landfill perimeter berm in accordance and compliance with the requirements of the Final CAD in the event that New Ventures has stopped and refused to resume or abandoned any construction or post-construction monitoring required by the Final Judgment and Final CAD for any portion of the Landfill perimeter berm; secure the continued construction, completion and functioning of storm water basin 1 and any discharge structures related to storm water basin 1 in accordance and compliance with the requirements of the Final CAD in the event that NVLLC has stopped and refused to resume or abandoned any construction of storm water basin 1 or any of its related discharge structures; and otherwise inspect the Site or monitor activity to ensure compliance with all terms, conditions, and requirements of this Final Judgment and the Settlement Agreement, as well as with any other applicable administrative enforcement orders issued by the Department. The Department and its contractors shall have the right to access the Site at any time and without notice to take actions necessary to control leachate releases, pump leachate tanks, remove leachate released to wetlands, and otherwise correct any leachate management violations if New Ventures has not returned to full compliance with the leachate management requirements of Appendix E to the Settlement Agreement, Leachate Control Plan, within seventy-two (72) hours of notice from the Department. The Department and its contractors shall also, within seventy-two (72) hours of notice by the Department, have the right to access the Site at any time to take actions necessary to: (i) assure that the landfill gas system, including, without limitation, the LFG Pre-treatment System, the enclosed flare, and gas collection system, is operating in full compliance with the performance standards in Appendix B to the Settlement Agreement; (ii) patch, repair, or extrusion weld any FML rips, tears, seam openings or other damage; (iii) cover, patch, or otherwise mitigate any breakouts of hydrogen sulfide or other Landfill gases from the Landfill surface; or (iv) place cover over Active or Inactive Areas of the Landfill in order to assure compliance with the requirements of Sections B and C of Appendix C to the Settlement Agreement, Landfill Cover Protocol. The Department also retains all rights of access to the Site under applicable state and federal law.

The Court's order allowing the parties' joint motion to amend also adds the following new Exhibit 2 and Exhibit 3 to Appendix A of the Settlement Agreement:

**EXHIBIT 2**

**OCTOBER 28, 2010 LANDFILL SLOPE STABILITY ANALYSIS BY McPHAIL ASSOCIATES**

**Attached as EXHIBIT 2:**

**to:**

**APPENDIX A: PERIMETER BERM GEOTECHNICAL INVESTIGATION PROTOCOL**

This Landfill Slope Stability Analysis performed by McPhail Associates Berm, dated October 28, 2010, is attached as Exhibit 2 and incorporated by reference into Appendix A of 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, as amended by Orders of the Court on May 13 and 27, 2009 and October 7, 2009 (“Final Judgment”).

**EXHIBIT 2**

**OCTOBER 28, 2010 LANDFILL SLOPE STABILITY ANALYSIS BY McPHAIL**

**ASSOCIATES**

**Attached as EXHIBIT 2:**

**to:**

**APPENDIX A: PERIMETER BERM GEOTECHNICAL INVESTIGATION**

**PROTOCOL**

This Landfill Slope Stability Analysis performed by McPhail Associates Berm, dated October 28, 2010, is attached as Exhibit 2 and incorporated by reference into Appendix A of 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, as amended by Orders of the Court on May 13 and 27, 2009 and October 7, 2009 (“Final Judgment”).



Geotechnical Engineers

September 28, 2010

New Ventures Associates, LLC  
85-87 Boston Street  
Everett, MA 02149

Attention: Messrs. William Thibeault and Steven Trettel

Reference: Crow Lane Landfill Corrective Action Design; Newburyport, Massachusetts  
Summary of Slope Stability Analysis Performed for Concept C Revised Grading

Messrs. William Thibeault and Steven Trettel:

This letter documents the results of our slope stability analysis associated with the proposed revised site grading as a result of the elimination of the mechanically stabilized earth (MSE) wall that was to be constructed as part of the corrective action design for the Crow Lane Landfill located in Newburyport, Massachusetts.

The current proposed corrective action design (Concept C) includes the construction of a 2 horizontal (h) to 1 vertical (v) berm in front of the existing berm. The top of the 2 h to 1 v berm would be at approximately Elevation +86.5. In addition to the proposed landfill cap, portions of the existing landfill above Elevation +86.5 would be flattened to an approximate 3 h to 1 v slope by adding soil.

The existing and proposed berm geometries at Section A-A were obtained from site plans provided by SITEC on September 2, 2010. The soil properties utilized in the slope stability analyses are the same as those utilized in our previous analyses included in our June 10, 2010 letter.

The two-dimensional slope stability computer program SLIDE developed by Rocscience, Inc. was utilized to compute the factor of safety (FS) for existing and proposed conditions. The Bishop Simplified and Spencer Methods of determining the FS were utilized. The results of our slope stability analyses are attached herein in Appendix A.

In accordance with US EPA guidelines for the design of land disposal facilities, developed under RCRA Subtitle D, a FS greater than or equal to 1.25 is considered acceptable for slope stability analyses during construction when site specific soil properties are available. We understand that according to the settlement agreement of April 2009, the required minimum factor of safety is 1.3. The computed minimum factor of safety for the existing conditions is 1.3. The computed minimum factor of safety for the proposed conditions is also 1.3. Therefore, based on our slope stability analyses, construction of the 2 h to 1 v berm will not significantly change the factor of safety against slope failure from the existing conditions. The proposed berm can be constructed immediately without further laboratory soil testing or instrumentation because the proposed earthen berm geometry in Concept C does not decrease the factor of safety against slope failure from that of the existing conditions.

In the event that any changes in nature, design or location of the proposed berm are planned the conclusions and recommendations contained herein should not be considered valid unless the changes are reviewed and conclusions of this letter modified or verified in writing.



New Ventures Associates, LLC  
September 28, 2010  
Page 2

We trust that the above is sufficient for your present requirements. Should you have any questions concerning the recommendations presented herein, please do not hesitate to call us.

Very truly yours,

McPHAIL ASSOCIATES, INC.

Jonathan W. Patch, P.E.

Chris M. Erikson, P.E.

Chris M. Erikson, P.E.

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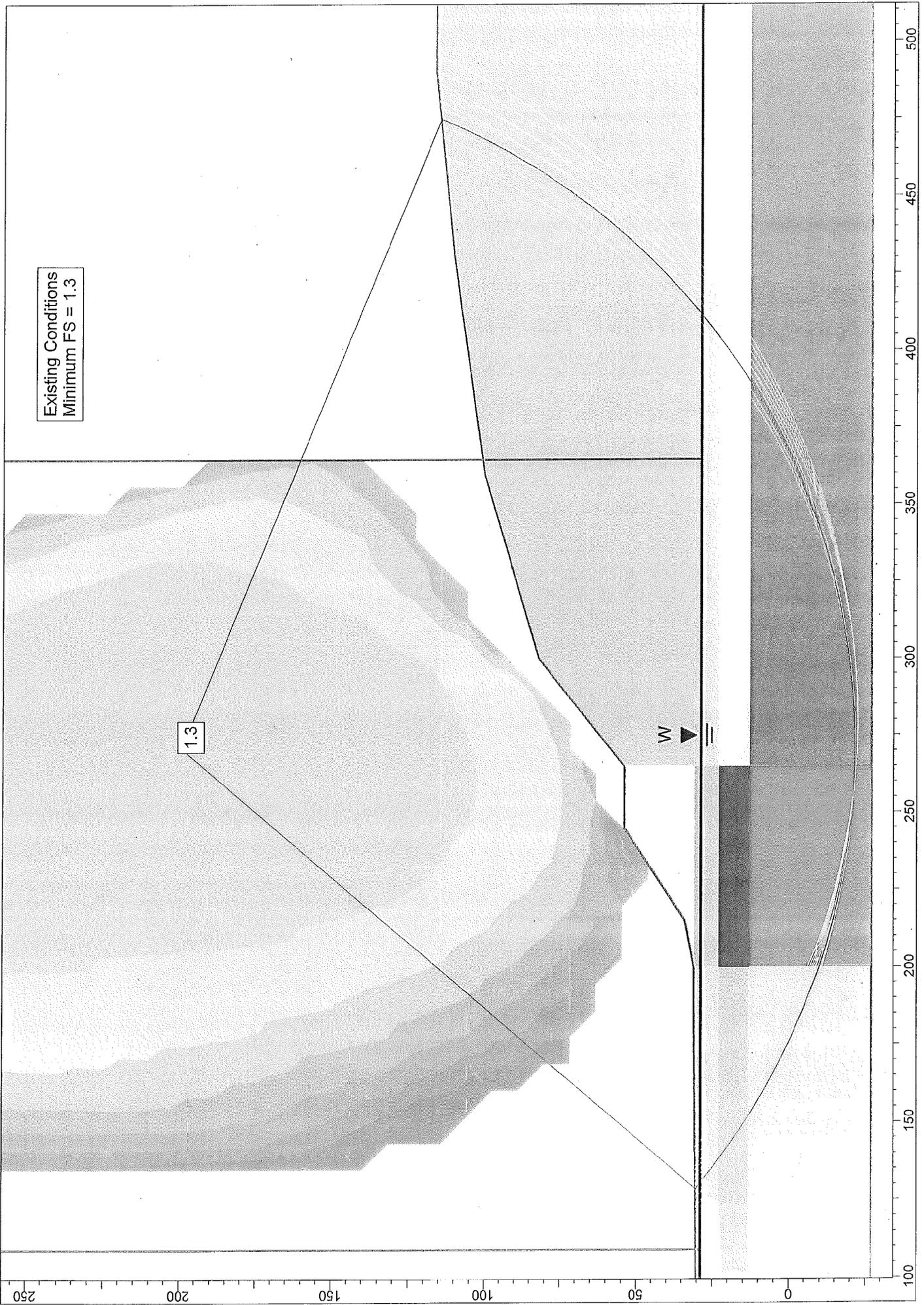
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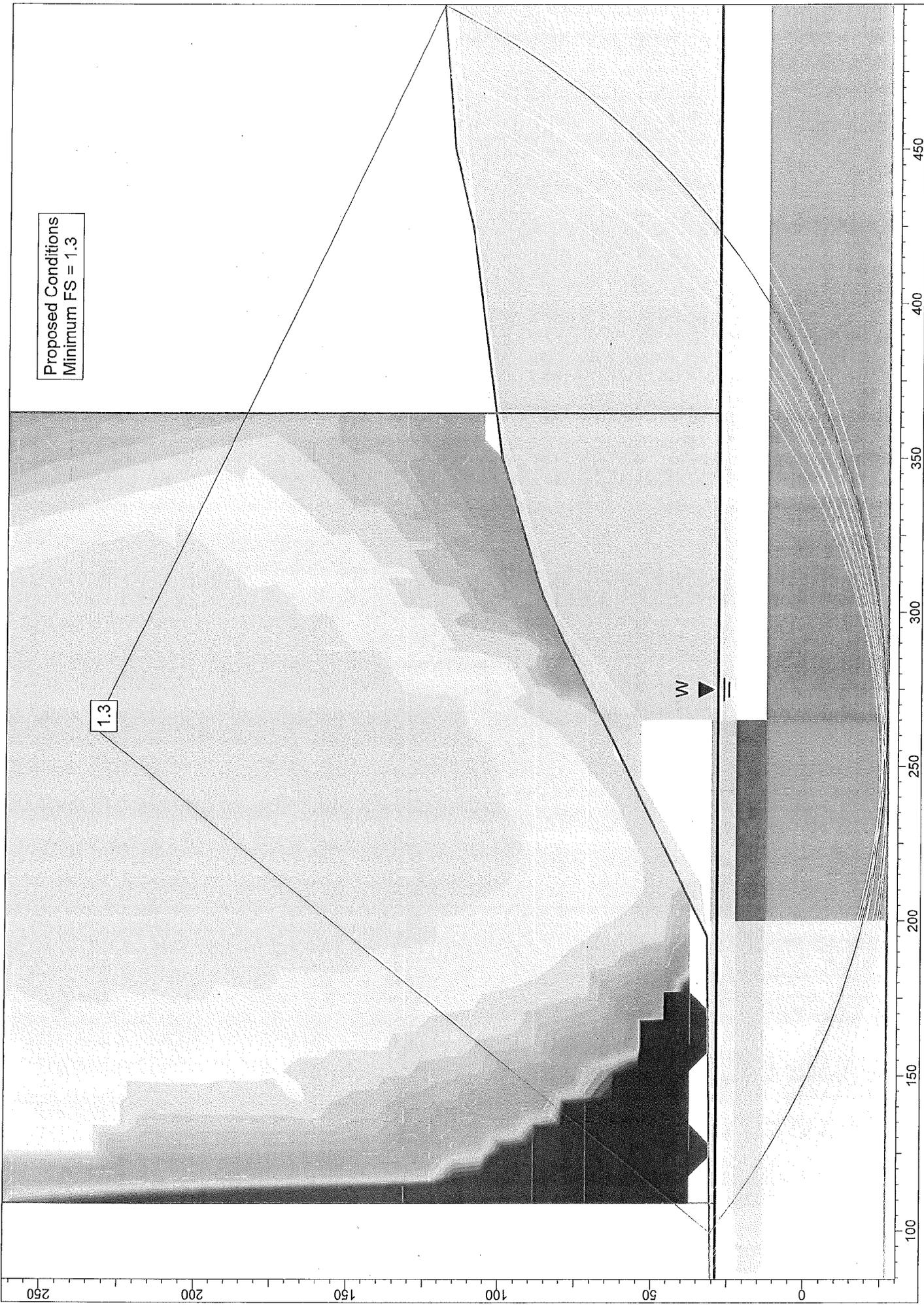


Geotechnical Engineers

**APPENDIX A**

Slope Stability Analyses Performed by McPhail Associates, Inc.





**EXHIBIT 3**

**LANDFILL BERM CONSTRUCTION, WETLANDS RESTORATION AND REPLICATION  
REQUIREMENTS AND PROTOCOL**

**Attached as EXHIBIT 3:**

**to:**

**APPENDIX A: PERIMETER BERM GEOTECHNICAL INVESTIGATION PROTOCOL**

This Landfill Berm Construction, Wetlands Restoration and Replication Requirements and Protocol is attached as Exhibit 3 and incorporated by reference into Appendix A of 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, as amended by Orders of the Court on May 13 and 27, 2009 and October 7, 2009 (“Final Judgment”).

The Landfill berm (“Berm” or “Perimeter Berm”) shall be constructed in accordance with the Final CAD, attached as Exhibit 2 and incorporated by reference into the Settlement Agreement, including, without limitations, the design Plan Sheets attached as Exhibit A to the Final CAD.

In addition, the Berm shall be constructed in accordance with the following requirements and specifications:

**Sand Drainage Layer and Loam and Seed Placement:**

Prior to initiating construction of the Berm and prior to initiating the application of the sand drainage layer and loam and seed placement on top of the FML cover, New Ventures shall designate a third party Wetlands Scientist with experience and training in wetlands protection and

familiar with the Wetlands Protection Regulations, 310 CMR 10.00, to oversee any placement of erosion control measures and the regular inspection or replacement of erosion and sedimentation control devices. The name and phone number of the Wetlands Scientist must be provided to MassDEP and the Newburyport Conservation Commission in the event that this person has to be contacted, due to an emergency at the site, during any 24-hour period, including weekends.

Prior to initiating construction of the Berm or placement of the loam and seed, all siltation and erosion controls as specified on the Revised Final CAD shall be in place and certified in writing to MassDEP as such by the Project Engineer or the Wetlands Scientist.

Wetland protection measures shall include but are not limited to the following:

1. At a minimum, siltation controls shall be placed along the limit of activity as shown on the Final Grading and Stormwater Management Plan sheet (Drawing 3), between all disturbed areas and the wetlands. Filter fabric shall be installed as recommended by the manufacturer and staked at intervals no greater than 8-feet except as otherwise directed by MassDEP or the Newburyport Conservation Commission or its Agent. The bottom six (6) inches of the material shall be buried by excavating a six (6) inch deep trench along the toe of the fabric line and placing the bottom six (6) inches of the filter fabric into the trench. The trench shall then be backfilled with the spoil material and compacted. In no instance shall the bottom of the fabric be laid on the ground surface and simply covered with backfill or stone.
2. Accumulation of sediment of 6 inches or more shall be removed and deposited in areas outside the 100-foot buffer zone.
3. The proposed limit of work shall be clearly marked with stakes or flags, which shall be maintained until construction of the Berm and placement of loam and seed is complete. All flags used for the above purposes shall be of a color different from other flagging used on the site.

Adequate erosion and sedimentation control measures shall be installed and maintained in their proper effectiveness during the entire construction phase for this project and shall remain in place and properly functioning until MassDEP has authorized their removal.

Erosion control measures shall be monitored on a daily basis, or as needed and be immediately reinforced, repaired, or replaced when needed, per judgment of SITEC, the Wetlands Scientist, the Newburyport Conservation Commission or its Agent, and/or MassDEP. On a monthly basis, New Ventures shall submit to MassDEP with copies to the Conservation Commission, a report prepared by and signed by the Wetlands Scientist that certifies that all siltation controls have been inspected, are functioning as intended, and repaired as necessary.

During the construction period for the berm and during the sand drainage layer installation and loam and seed placement and until such time as the seed has taken root, the detention areas are to be inspected on a monthly basis and after storms that exceed one (1) inch of rainfall, to make sure that the outlets are not clogged, that sediment levels have not exceeded six (6) inches in depth and that all banks are stable and free of erosion. During this construction period if sediment levels exceed six inches of depth, it shall be removed from the basins.

New Ventures shall maintain all stormwater basins, as necessary, by removal of any accumulated sediment or debris that would reduce the design storage capacity of the basins by 10 percent or more.

Wetlands Restoration and Replication:

By no later than January 30, 2011, New Ventures shall submit to the Newburyport Conservation Commission and MassDEP for review and comment a draft restoration and replication plan (the "Draft Plan") consisting of a surveyed site plan and a written narrative plan

and schedule describing the measures to be taken to conduct work on the parcel of land owned by the City of Newburyport located across Crow Lane from the Landfill for the restoration of the vernal pool currently located on that parcel, including the wetlands and buffer zone around the vernal pool, and construction of a wetland replication area.

The Draft Plan shall include, at a minimum, each of the following:

Vernal Pool Restoration:

A delineation and a description of the vernal pool, its Bordering Vegetated Wetlands (“BVW”), and its buffer zone;

The Draft Plan shall include the functional restoration of a minimum of 4,200 square feet of the vernal pool and the BVW around the vernal pool, including the habitat associated with the vernal pool and surrounding BVW. Such restoration shall include, but not be limited to removal of any debris or waste materials including, trash, metal, concrete and other nuisance materials from the vernal pool and its BVW and buffer zone;

An invasive species control plan for the BVW surrounding the pool, including the management of common reed (*Phragmites australis*) adjacent to it;

Wetland Replication:

A Wetland Resource Area Field Delineation shall be depicted on a survey plan

("Delineation Plan") delineating, in the vicinity of the proposed replication area, the extent of on-site existing and pre-alteration wetland resource areas, including adjacent surface waters such as intermittent streams and vernal pools, in accordance with the MassDEP handbook *Delineating Bordering Vegetated Wetlands Under the Massachusetts Wetlands Protection Act* (MassDEP, 1995).

The Draft Plan for the Site shall include, at a minimum:

1. A plan for wetland replication that will create a minimum of 4778 square feet of wetlands and incorporating measures that will result in their functional restoration;
2. A figure depicting the approved wetland delineation;
3. A comprehensive grading plan of the wetlands replication area, including existing and proposed one foot contours;
4. A comprehensive planting plan and construction sequence outlining the species to be planted, density requirements, height requirements, and monitoring protocol for replanting vegetation within the footprints of the removed materials;
5. An invasive species control plan for the replication area including the management of common reed (*Phragmites australis*);
6. A sequence of work to ensure that all BVW filled by closure activities are replicated at the chosen replication site by no later than June 30, 2011, including long term monitoring; and
7. The replication of a minimum of 4778 square feet of wetlands can be reduced only by written approval of the Department, with conditions, including, without limitation, the condition that the total combined area of the restoration and replication required by this plan requirement protocol result in a minimum combined restoration and replication area twice the area of the wetlands filled or altered by berm construction (replication and restoration at a minimum 2:1 ratio).

Following Conservation Commission and MassDEP review and comment on the Draft Plan, New Ventures shall revise the Draft Plan to address and incorporate the Conservation Commission's comments and to address and remedy any and all deficiencies identified by MassDEP's and then resubmit it to the Commission for approval and then to the MassDEP for approval as the final wetland restoration plan ("Final Wetlands Plan"). Upon approval by

MassDEP, the Final Wetland Plan is hereby incorporated into, and made an enforceable part of this Judgment.

Implementation of the Final Wetland Plan. Upon approval of the Final Wetlands Plan, New Ventures shall implement the Final Wetlands Plan and shall commence the replication and restoration of areas as specified in and required by the Final Wetlands Plan by no later than June 30, 2011. New Ventures shall further ensure that a Wetland Scientist will be on the Site while restoration and replication work pursuant to the Final Wetlands Plan is underway in order to supervise and direct New Venture's work and to verify that the work is being undertaken in accordance with the Final Wetlands Plan.

All activities involving preparation and construction of the wetland replication/restoration areas, including but not limited to: inspecting and confirming site flagging prior to and after excavation of the wetland replication areas; identifying appropriate organic soils to be placed in the replication areas; overseeing final grading of the areas; inspecting final elevations and confirming ground water elevations; obtaining, planting and maintaining the specified wetland plants; and monitoring and reporting on the replication/restoration areas shall be overseen by the Wetland Scientist who will be on-site while the work is being performed. The Wetland Scientist shall submit a written status report to MassDEP and the Newburyport Conservation Commission at the following times:

1. at the start of excavation of the restoration and replication areas;
2. when final grades are established;
3. when the planting is completed;
4. one month after planting has been completed; and
5. at the beginning and end of the growing season each year for at least five (5) years after the restoration and replication areas have been planted.

Annual Compliance Monitoring. Upon completion of the wetland restoration and replication activities at the Site pursuant to the Final Wetlands Plan, New Ventures shall have a Wetland Scientist monitor the wetlands replication and vernal pool wetlands restoration areas for five (5) years of continuing growing seasons, with reports submitted annually to MassDEP and the Newburyport Conservation Commission by October 31<sup>st</sup> of each year (“Annual Compliance Report”). New Ventures shall submit the first Annual Compliance Report no later than November 15, 2011.

The Annual Compliance Report shall include photographic stations documenting pre- and post-restoration and replication conditions, a description of soil stability, plant growth and vigor, and other functions.

The final Annual Compliance Report shall include an as-built plan using the same survey protocol described in paragraph 1 under the “Wetland Replication” Section, above, and shall be submitted to MassDEP and copied to the Newburyport Conservation Commission by no later than November 15, 2016 accurately depicting the Site and describing all replication and restoration activities. This final Annual Compliance Report shall serve as a final completion report and shall be submitted to MassDEP with a request for a “return to compliance” letter from MassDEP (“Return to Compliance Letter”).

Monitoring reports for the vernal pool and vernal pool restored wetlands shall be provided annually for five (5) years with the Annual Compliance Report or until it becomes

revegetated with 75 percent cover of indigenous wetland species. Monitoring reports for the replicated wetlands shall be provided annually for five (5) years or until the wetlands vegetation is established with 75 percent cover of indigenous wetland species.

The invasive species control program shall continue in vernal pool wetlands until such time as the invasive species common reed (*Phragmites australis*) is no longer the dominant species as determined by the Dominance test specified in MassDEP's BVW Delineation Manual. In the event the 2016 monitoring report indicates failure of the invasive species control program, monitoring reports shall be submitted annually for each following year until it is successful.

If, within or upon the end of the five-year monitoring period, functional replication and/or restoration of all wetland resource areas to be replicated and / or restored are not achieved, New Ventures shall conduct additional restoration and / or replication activities and monitoring until such functional replication and/or restoration is achieved. Prior to conducting such work, New Ventures shall provide MassDEP and the Newburyport Conservation Commission with a supplemental plan (the Supplemental Wetlands Plan) for the restoration and/or replication area prepared by a Wetland Scientist. The Supplemental Wetlands Plan shall be implemented by New Ventures upon approval by MassDEP. The planting/restoration and/or replication required in the approved Supplemental Wetlands Plan shall be monitored by New Ventures pursuant to the conditions prescribed in MassDEP's approval.

Any failure by New Ventures to implement any provision or requirement of this Exhibit 3, Landfill Berm Construction, Wetlands Restoration and Replication Requirements and Protocol

or the Final Wetlands Plan or Supplemental Wetlands Plan as approved by MassDEP shall be a violation of this Final Judgment.

The Court's order allowing the parties' joint motion to amend also adds the following new Exhibit 2 to Appendix F of the Settlement Agreement:

## EXHIBIT 2

### BLASTING PROTOCOL REQUIREMENTS FOR STORMWATER BASIN 1

Attached to:

#### APPENDIX F: INTERIM STORMWATER CONTROL PLAN

These requirements for a blasting protocol to be submitted by New Ventures to the Department for approval in accordance with the requirements of paragraph 11(d)(iii) of the Settlement Agreement executed on April 30, 2009 and paragraph 12(d)(iii) of the Final Judgment in *Commonwealth v. New Ventures Associates, LLC*, Suffolk Superior Court C.A. No. 2006-00790, as amended by Orders of the Court on May 13 and 27, 2009 and October 7, 2009 (“Final Judgment”) are attached as Exhibit 2 and incorporated by reference into Appendix F of the Settlement Agreement and Final Judgment.

New Ventures shall submit for Department approval a blasting protocol that shall, without limitation:

1. Limit the blasting and removal of bedrock to the current approved bottom of basin elevation of 44.5 feet as shown on the Final CAD.
2. Require the on-site oversight and monitoring of the blasting by New Ventures consultant, SITEC.
3. Require and include a protocol for the monitoring of the ambient air at the landfill and abutting residential areas (including responding to complaints) for hydrogen sulfide by SITEC personnel during the drilling of the blast holes and the blasting.
4. Require that, in response to any verified odor complaint, SITEC identify all odor sources and provide New Ventures with guidance to remedy the verified odor problems, and that if odors persist for more than 24 hours, blasting, including the drilling of blast holes, shall cease and shall not resume until the Department determines that all odor problems have been remedied.
5. Require and include a protocol for seismic monitoring of the blasting.
6. Include a plan that shows the proposed blast hole density, pattern, and sequencing that includes, but is not limited to, commencing the blasting in the southeast portion of Basin 1 and proceeding from south to north across the basin.

The Court's order allowing the parties' joint motion to amend also adds the following new Exhibit 2 to the Settlement Agreement:

## **EXHIBIT 2**

### **Corrective Action Design (CAD)**

#### **Final Landfill Closure**

#### **Construction Quality Assurance Plan (CQA)**

#### **Final Closure Construction and Gas Extraction System Installation**

**including**

#### **Technical Specifications**

This Final Corrective Action Design Plan ("Final CAD"), revised in October 2010, November 2010, and December 2010, and approved by the Department is attached as Exhibit 2 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, as amended by Orders of the Court on May 13 and 27, 2009 and October 7, 2009 ("Final Judgment"). This Final CAD revised in October, November and December 2010 replaces the Final CAD revised in 2006 and 2008 previously attached as Exhibit 2.

Finally, the Court's order to amend replaces Exhibit A to the Final CAD in the Settlement Agreement with a new Exhibit A consisting of the fourteen (14) oversized plan sheets filed together with this order and the following new Index of Plan Sheets:

**Exhibit A**  
**Corrective Action Design Plan Sheets**  
**Index of Sheets**

SITEC Environmental

<u>Sheet No.</u>	<u>Title</u>	<u>Date</u>	<u>Date of Last Revision</u>
1	Title Index and Locus	NA	10/20/10
2	Existing Conditions & Collection system As-Built	Mar 17, 2006	10/20/10
3	Final Grading and Stormwater Management Plan	Jan 9, 2007	10/20/10
4	Landfill Gas Management Plan	Mar 17, 2006	10/20/10
4A	Gas Well and Connection Plan Gas Extraction Wells EW-7, EW-10 and EW-13	Oct 1, 2007	10/20/10
4B	Landfill Gas Treatment System Piping Diagram	Mar 1, 2007	10/20/10
5	Landfill Cross-Section	Mar 17, 2006	12/13/10
6	Final Closure System Details and Stormwater Management System Details 1	Mar 17, 2006	12/13/10
7	Stormwater Management System Details 2	Mar 17, 2006	11/08/10
8	Landfill Gas Management System Details	Mar 3, 2006	11/08/10
9	Leachate Collection System As-Built Details	Mar 17, 2006	10/20/10 (no revision)
10	Final Capacity Plan	Mar 17, 2006	10/20/10

Cornerstone Environmental Group, LLC

1	Horizontal Gas Collection System Site Plan	10/24/06	12/18/06
2	Gas Details	10/24/06	None