


CIVIL ACTION COVER SHEET		DOCKET NUMBER	Massachusetts Trial Court Superior Court		
		COUNTY <u>Suffolk Superior Court (Boston)</u>			
Plaintiff <u>Commonwealth of Massachusetts</u>			Defendant:		
ADDRESS: <u>Office of the Attorney General, One Ashburton Place, Boston,</u>			ADDRESS: <u>Feedback Earth, Inc.</u>		
<u>MA 02108</u>			<u>109 Creeper Hill Road, Grafton, MA 01536</u>		
Plaintiff Attorney: <u>Zeus Smith, AAG, Jillian Riley AAG</u>			Defendant Attorney: <u>Edward V. Colbert III, Esq., Brian Haney, Esq.</u>		
ADDRESS: <u>Office of the Attorney General, One Ashburton Place, Boston,</u>			ADDRESS: <u>Casner & Edwards, LLP</u>		
<u>MA 02108</u>			<u>303 Congress Street</u>		
			<u>Boston, MA 02210</u>		
BBO: <u>712609/681846</u>			BBO:		
TYPE OF ACTION AND TRACK DESIGNATION (see instructions section on next page)					
CODE NO. <u>AE1</u>	TYPE OF ACTION (specify) <u>Administrative Action Involving Commonwealth</u>	TRACK <u>A</u>	HAS A JURY CLAIM BEEN MADE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		
*If "Other" please describe: _____					
Is there a claim under G.L. c. 93A? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO					
Is there a class action under Mass. R. Civ. P. 23? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO					
STATEMENT OF DAMAGES REQUIRED BY G.L. c. 212, § 3A					
The following is a full, itemized and detailed statement of the facts on which the undersigned plaintiff or plaintiff's counsel relies to determine money damages. (Note to plaintiff: for this form, do not state double or treble damages; indicate single damages only.)					
TORT CLAIMS					
A. Documented medical expenses to date					
1. Total hospital expenses _____					
2. Total doctor expenses _____					
3. Total chiropractic expenses _____					
4. Total physical therapy expenses _____					
5. Total other expenses (describe below) _____					
Subtotal (1-5): <u>\$0.00</u>					
B. Documented lost wages and compensation to date _____					
C. Documented property damages to date _____					
D. Reasonably anticipated future medical and hospital expenses _____					
E. Reasonably anticipated lost wages _____					
F. Other documented items of damages (describe below) _____					
TOTAL (A-F): <u>\$0.00</u>					
G. Briefly describe plaintiff's injury, including the nature and extent of the injury:					
<u>Statutory Violations of the Clean Air Act, G.L. c. 111, s. 142A-O and the Solid Waste Act G.L., c. 111, s. 150A; and creating a public nuisance by noxious odor</u>					
CONTRACT CLAIMS					
<input type="checkbox"/> This action includes a claim involving collection of a debt incurred pursuant to a revolving credit agreement. Mass. R. Civ. P. 8.1(a).					
Item #	Detailed Description of Each Claim				Amount
1.					
Total					
Signature of Attorney/Self-Represented Plaintiff: X <u>Zeus Smith, AAG</u>			Date: <u>October 16, 2024</u>		
RELATED ACTIONS: Please provide the case number, case name, and county of any related actions pending in the Superior Court.					
CERTIFICATION UNDER S.J.C. RULE 1:18(5)					
I hereby certify that I have complied with requirements of Rule 5 of Supreme Judicial Court Rule 1:18: Uniform Rules on Dispute Resolution, requiring that I inform my clients about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods of dispute resolution.					
Signature of Attorney: X <u>Zeus Smith, AAG</u>			Date: <u>October 16, 2024</u>		

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT
CIVIL ACTION NO.

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

FEEDBACK EARTH, INC.,

Defendant.

COMPLAINT

RECEIVED
OCT 16 2024
SUPERIOR COURT - CIVIL
JOHN E. POMEROY, III
ACTING CLERK/MAGISTRATE

INTRODUCTION

1. Defendant Feedback Earth, Inc. ("Feedback Earth") is generating noxious odors that spread from its animal feed dehydrator operation at its property in Grafton, Massachusetts ("Facility") up to at least 4.6 miles away, adversely affecting neighbors' quality of life and the use of their properties. These fetid odors have woken neighbors from their sleep, forced them to close windows at their homes, caused businesses to send employees home, kept children from their backyards, and caused nausea, headaches, and difficulty breathing. The odors are an unlawful condition of air pollution and a public nuisance, and they violate the conditions of Feedback Earth's permits to operate under the Massachusetts Clean Air Act, G.L. c. 111, §§ 142A-O ("Clean Air Act") and the Massachusetts Solid Waste Management Act, G.L. c. 111, § 150A ("Solid Waste Act").

2. Furthermore, in violation of the Solid Waste Act, since approximately November 2021, Feedback Earth has accepted spoiled and unauthorized food waste and fails to lawfully manage the food material it processes at its Facility, resulting in unsanitary conditions, noxious

odors offsite, and the creation of human health risks. Feedback Earth has also stored food material outside of the Facility, contributing to the generation of higher nuisance odors and creating a potential source of food for pests.

3. As a result of these illegal actions and omissions, the Commonwealth of Massachusetts ("Commonwealth") seeks a preliminary, and after judgment, permanent injunction prohibiting, among other things, Feedback Earth's acceptance of lobster shells and other crustacean waste, storage of food material outside, and generation of putrid nuisance odors emanating from the Facility, as well as the imposition of civil penalties for Feedback Earth's repeated violations of the Clean Air Act and the Solid Waste Act.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action and the authority to grant the relief requested pursuant to G.L. c. 111, §§ 142A, 142B, and 150A, and c. 214, §§ 1 and 3(12).

5. Venue lies in Suffolk Superior Court pursuant to G.L. c. 223, § 5.

PARTIES

6. The plaintiff is the Commonwealth, appearing by and through the Attorney General and the Department of Environmental Protection ("Department").

7. The Attorney General is the chief law enforcement officer of the Commonwealth and maintains a primary office at One Ashburton Place, Boston. The Attorney General has authority to bring this action and to seek the relief requested pursuant to G.L. c. 111, §§ 142A, 142B, and 150A, G.L. c. 12, §§ 3, and 11D, and G.L. c. 214, §§ 1 and 3(12).

8. The Department is an agency of the Commonwealth responsible for the administration of various environmental laws, including the Clean Air Act and the Solid Waste

Act. The Department maintains its principal office at One Hundred Cambridge Street, Suite 900, Boston, and has a Central Regional Office at 8 New Bond Street, Worcester.

9. Feedback Earth is a Delaware corporation with its principal place of business at 109 Creeper Hill Road, Grafton ("Property"), where it owns and operates the Facility.

FACTS

The Facility

10. Feedback Earth purchased the Property and Facility on June 16, 2021.

11. The Facility is located on a 4.2-acre parcel. It is comprised of three primary buildings, as well as a small equipment storage hut and a product load-out system consisting of two silos and a semi-covered truck loading unit. Surrounding the Facility's three buildings is a large unpaved lot used for staging, deliveries, and departures.

12. The Facility directly abuts industrial properties, and there are several residential neighborhoods within a mile of the Facility. These residential neighborhoods include: Flintwood Estates to the northeast; the area around Hawthorne Drive to the south of the Facility; and the Hollywood Drive neighborhood to the southeast. There is also a commercial area to the southeast of the Facility with restaurants and other businesses.

The Process

13. Feedback Earth processes fresh unwanted food into ingredients for animal feed using a dehydration process, among other things.

14. Since Feedback Earth took ownership of the Facility in 2021, Feedback Earth has received unwanted food from manufacturers, grocery stores, and other institutions, and plate scrapings from restaurants. The unwanted food arrives either as loose, bulk material, typically delivered in compactors or dump trailers, or packed on pallets in enclosed trailers.

15. Feedback Earth grinds, homogenizes, and sizes this food material, before conducting a dehydration cooking process using an industrial dryer (“Dryer”) that pasteurizes and dehydrates the food material into animal feed pellets.

16. On or about June 26, 2024, for the first time, Feedback Earth began receiving and processing large quantities of lobster shells, which are ground up separately with an industrial grinder (“Grinder”) before being added to the feedstock.

The Permits

17. Feedback Earth’s operations are subject to regulation under the Clean Air Act and its regulations at 310 C.M.R. 7.00 et seq. (“Air Regulations”), and the Solid Waste Act and its regulations at 310 C.M.R. 16.00 et seq. and 310 C.M.R. 19.000 et seq. (“Solid Waste Regulations”) and permits issued under each statute.

18. Feedback Earth operates the Facility under a Non-Major Comprehensive Plan Approval (“Plan Approval”) issued by the Department on May 3, 2017, pursuant to the Air Regulations.

19. Feedback Earth also operates the Facility under a Recycling, Composting or Conversion Permit (“RCC Permit”) issued by the Department on August 6, 2015, pursuant to the Solid Waste Regulations at 310 C.M.R. 16.05.

20. The Plan Approval and the RCC Permit were both initially issued to the prior owner of the Property and prior operator of the Facility but now apply to Feedback Earth’s operation as the current owner and operator of the Facility.

Historic Violations of the Plan Approval

21. Relevant here, the Plan Approval states that “[t]he Facility shall not cause a condition of air pollution due to odors,” in violation of the Air Regulations at 310 C.M.R. 7.01(1), 7.02(3)(f), and 7.09(1).

22. Feedback Earth generated odors from the Facility on at least November 4, 18, 23, and 29, and December 6, 2021, adversely impacting the neighbors use and enjoyment of their properties.

23. Table 4 (“Record Keeping Requirements”) of the Plan Approval states that Feedback Earth is required to maintain adequate records on-site at the Facility of its compliance status with all Operational, Production, and Emission Limits specified in the Plan Approval, and of the actual emissions of air contaminant(s) it emits for each calendar month and year. Table 4 also requires Feedback Earth to make the required records available to the Department upon request.

24. On November 18, 2022, Feedback Earth failed to make available to the Department the required on-site records at the Facility.

Historic Violations of the RCC Permit

25. The RCC Permit authorizes Feedback Earth to accept “Fresh Unwanted Food” from certain types of commercial and institutional sources and to process the material into animal feed pellets at the Facility.

26. “Fresh Unwanted Food” is defined in the RCC Permit as “material that has been approved for human consumption in the United States and is not currently solid waste, and therefore can be converted to a ‘Pelletized Animal Feed.’”

27. Section V.J. of the RCC Permit requires that “[a]ll handling of incoming Fresh Unwanted Food materials shall be inside the receiving building . . .” and that

“management/storage areas of the Operation at the Site . . . shall be maintained in a clean, orderly, and sanitary condition” From 2021 through 2022, Feedback Earth improperly stored Fresh Unwanted Food outside the Facility multiple times in violation of Section V.J. of the RCC Permit.

The 2022 ACOP

28. To address the 2021-2022 violations of the Clean Air Act and the Solid Waste Act, their underlying regulations, and the Plan Approval and RCC Permit, on May 5, 2022, Feedback Earth and the Department entered into an enforcement agreement called an Administrative Consent Order with Penalty (“2022 ACOP”).

29. The 2022 ACOP contains several provisions with which Feedback Earth agreed to comply, including prohibitions on outdoor storage or handling of food material and emission of nuisance odors. The ACOP also required Feedback Earth to notify the Department prior to accepting potentially odor generating food material, establish an official odor report hotline, and follow an odor response plan that required monthly reports of actions taken to address any nuisance odors. The ACOP included a stipulated penalties provision.

30. Between December 14, 2022, and March 6, 2024, the Department issued Feedback Earth four separate Stipulated Penalty Demands for violations of the 2022 ACOP.

Feedback Earth’s Continuing Public Nuisance Odors

31. Since, and despite, the Department’s last Stipulated Penalty Demand on March 6 through June 26, 2024, Feedback Earth continued to cause odors around the Facility that resulted in eighteen more odor complaints from residents.

32. These complaints arose from locations as far as 4.6 miles away from the Facility.

33. The complainants described these odors as the smell of “burnt bread/toast,” “vomit,” “garbage,” “rotten dog food,” “burnt oil,” and “sweaty socks.”

34. The complainants reported that, as a result of these disgusting odors, they were unable to enjoy outdoor activities, including gardening, yard work, walking, and sitting outside. Other complainants reported nausea and migraines, and that they were forced to keep windows closed.

35. Subsequently, on or about, June 26, 2024, residents began to report a significant change in Feedback Earth's odors, including an increase in the frequency and severity of the impacts and a shift in the character of the odor toward seafood-related odors.

36. At least by this time, Feedback Earth had begun accepting discarded lobster shells at the Facility.

37. Feedback Earth failed to report in advance to the Department that it intended to receive lobster shells at the Facility for processing, as is required by the Plan Approval.

38. Feedback Earth likewise failed to provide the Department three business days' notice prior to processing lobster shells as a new feedstock that has the potential to cause off-site odors, as required by Paragraph 10.D. of the ACOP.

39. From June 26 to September 14, 2024, Feedback Earth's oppressive odors resulted in 274 complaints to the Hotline, including 228 of which where the complainant also reported that the odors were disrupting their activities or were otherwise affecting their use or enjoyment of their property.

40. These complaints came from locations as far as 4.6 miles away from the Facility.

41. By contrast to the earlier complaints, these complainants described the odors overwhelmingly as "fishy." Other common descriptions included "garbage," "dead body," "low tide," "seafood," "vomit," and several distinct complaints of "rotten lobster."

42. The complainants reported that, as a result of these worsening odors, they were unable to garden, grill, perform yardwork, or use outdoor spaces for dining. The strength of the

odors prevented residents from walking outside, hiking, biking, and walking their pets.

Complainants were forced to keep windows closed and run air conditioners to prevent the odor from entering their homes.

43. In addition to the complaints reported to the Hotline, the Department has also received multiple direct complaints about Feedback Earth, which have been generally consistent with the Hotline complaints.

44. In response, Department staff have inspected the Facility on multiple occasions since June 26, 2024, and have detected intense, revolting odors emanating from the Facility.

45. During those inspections, rotten odors of moldy bread and spoiled seafood were present inside and outside of the Facility. The sources of those odors included tons of spoiled or decaying food waste delivered to the Facility, significant quantities of lobster shells, over 200 empty pallets soaked in "lobster juice," and approximately 100 cubic yards of ground-up lobster shells on the floor of the Facility.

46. Since June 26, 2024, residents have also created numerous social media posts documenting their complaints about Feedback Earth's disruptive odors and have also filed complaints with their local and state elected officials.

47. Residents have also routinely attended Town of Grafton Select Board Meetings to express frustration and outrage over the ongoing odors intruding on their daily lives.

48. Residents have additionally contacted local media, resulting in multiple televised news reports on Feedback Earth's fetid odors.

49. Feedback Earth's off-site odors and resident complaints to the Hotline and the Department continue to date.

Feedback Earth's Other Continuing Violations

Outside Storage of Fresh Unwanted Food

50. Feedback Earth has repeatedly stored the Fresh Unwanted Food it receives outdoors, increasing the potential for odors.

51. In particular, Feedback Earth stores open-topped roll-off containers and compactors outdoors in the Facility yard and on an adjacent property at 103 Creeper Hill Road in Grafton ("Adjacent Property") where it has contracted for outdoor storage.

52. On at least four days in July and August 2024, Feedback Earth stored several compactor units and containers in the Facility yard and the Adjacent Property. Feedback Earth stored Fresh Unwanted Food inside the containers, failed to clean the compactors, and left food material caked to their interior walls.

Failure to Notify the Department of Changes in Operations or the Facility

53. Between June 26 and July 18, 2024, Feedback Earth did not notify the Department prior to receiving and processing lobster shells.

54. Lobster shells have the potential to cause off-site odors, and Feedback Earth has not demonstrated to the Department that lobster shells can be processed without causing off-site odors.

55. Feedback Earth failed to notify the Department or seek its approval prior to installing the grinding machine used to grind the lobster shells it accepts at the Facility.

56. Feedback Earth temporarily ceased operation of the Dryer in late August 2024.

57. Feedback Earth failed to notify the Department or seek its approval prior to ceasing.

58. The Grafton Fire Department responded to the Facility to extinguish a fire from an external air compressor unit that damaged the Facility on or about September 23, 2024.

59. Feedback Earth failed to notify the Department of the incident or Grafton Fire Department's response to the Facility.

CAUSES OF ACTION

COUNT I: VIOLATIONS OF THE CLEAN AIR ACT

60. The Commonwealth repeats and realleges paragraphs 1 through 59 of this Complaint.

61. The Clean Air Act gives the Department broad authority to "adopt regulations . . . to prevent pollution or contamination of the atmosphere." G.L. c. 111, § 142A; see also id. §§ 142B and 142C (authorizing adoption of regulations to prevent pollution within air pollution control districts).

62. Pursuant to its authority under the Clean Air Act, the Department adopted the Air Regulations "to prevent the occurrence of conditions of air pollution where such do not exist and to facilitate the abatement of conditions of air pollution where and when such occur." These regulations "are designed to attain, preserve, and conserve the highest possible quality of the ambient air compatible with needs of society." 310 C.M.R. 7.00 (preamble).

Creating a Condition of Air Pollution

63. The Air Regulations at 310 C.M.R. 7.00 define "Air pollution" as: the presence in the ambient air space of one or more air contaminants or combinations thereof in such concentrations and of such duration as to:

- a. cause a nuisance;
- b. be injurious, or be on the basis of current information, potentially injurious to human or animal life, to vegetation or to property; or
- c. unreasonably interfere with the comfortable enjoyment of life and property or the conduct of business.

64. The Air Regulations at 310 C.M.R. 7.00 define "Air contaminant" to include "odor."

65. The Air Regulations at 310 C.M.R. 7.00 define "person" as "any individual, partnership, association, firm, syndicate, company, trust, corporation, . . . or any other entity recognized by law as the subject of rights and duties."

66. The Air Regulations at 310 C.M.R. 7.00 define "facility" as "any installation or establishment and associated equipment, located on the same, adjacent or contiguous property, capable of emissions."

67. Feedback Earth is a "person" within the meaning of 310 C.M.R. 7.00.

68. The noxious odors Feedback Earth emitted and is emitting from the Facility have caused and are causing a nuisance.

69. The noxious odors Feedback Earth emitted and is emitting from the Facility caused and continue to cause an unreasonable interference with the comfortable enjoyment of life and property and the conduct of business.

70. The noxious odors Feedback Earth emitted and is emitting from the Facility are a "condition of air pollution" within the meaning of 310 C.M.R. 7.00.

71. The Facility and all of Feedback Earth's equipment at the Facility, including the compactor units and containers Feedback Earth stored on the Adjacent Property, are a "facility" within the meaning of 310 C.M.R. 7.00.

72. The Air Regulations at 310 C.M.R. 7.09(1) state that "[n]o person having control of any dust or odor generating operations such as, but not limited to . . . food preparation or processing facilities . . . shall permit emissions therefrom which cause or contribute to a condition of air pollution."

73. By emitting nuisance orders from the Facility, thereby repeatedly causing a condition of air pollution since at least June 26, 2024, Feedback Earth violated the Air Regulations at 310 C.M.R. 7.09(1) and the Clean Air Act.

74. The Air Regulations at 310 C.M.R. 7.01(1) prohibit any “person owning, leasing, or controlling the operation of any air contamination source” from “willfully, negligently, or through failure to provide necessary equipment or to take necessary precautions, permit any emission from said air contamination source or sources of such quantities of air contaminants which will cause, by themselves or in conjunction with other air contaminants, a condition of air pollution.”

75. By failing to take precautions necessary to contain the noxious odors emitted from its operations at the Facility, repeatedly causing conditions of air pollution since at least June 26, 2024, Feedback Earth violated 310 C.M.R. 7.01(1) and the Clean Air Act.

76. The Air Regulations at 310 C.M.R. 7.09(4) prohibit “the handling, transportation, or storage of any material in a manner that results or may result in emissions therefrom which cause or contribute to a condition of air pollution.”

77. By handling, transporting, and storing the Fresh Unwanted Food, food waste, lobster-soaked pallets, and waste-covered containers and compactors in a manner that resulted in emissions of odors that caused or contributed to a condition of air pollution since at least June 26, 2024, Feedback Earth violated 310 C.M.R. 7.09(4) and the Clean Air Act.

Failing to Comply with Plan Approval

78. The Air Regulations at 310 C.M.R. 7.01(3) require that anyone who, among other things, “obtains a restricted emission status approval, plan approval, emission control plan approval, operating permit or other approval issued by the Department, shall comply with the terms and conditions contained therein.”

79. Similarly, the Air Regulations at 310 C.M.R. 7.02(3)(f) state that “no person shall operate a facility approved under 310 C.M.R. 7.02, except in compliance with any plan approval issued to the facility.”

80. The Plan Approval is a “plan approval” within the meaning of 310 C.M.R. 7.00.

81. By failing to comply with the Plan Approval, including by creating a condition of air pollution repeatedly since at least June 26, 2024, and failing to notify the Department of its new intake of lobster shells and installation of the Grinder, Feedback Earth violated 310 C.M.R. 7.01(3) and 7.02(3)(f), and the Clean Air Act.

82. General Laws c. 111, §§ 142A and 142B state that a person who violates the Clean Air Act or its regulations is liable for civil penalties of up to \$25,000 per day per violation and authorize this Court to enjoin further violations.

COUNT II: VIOLATIONS OF THE SOLID WASTE ACT

83. The Commonwealth repeats and realleges paragraphs 1 through 82 of this Complaint.

84. Pursuant to the Solid Waste Act, the Department promulgated regulations at 310 C.M.R. 16.00 and 19.000.

85. “Facility” is defined at 310 C.M.R. 16.02 and 19.006 to include a site that “has been or will be used for the handling, storage, transfer, processing, treatment, or disposal of solid waste, including all land, structures and improvements which are directly related to solid waste activities.”

86. The Facility is a “facility” as that term is defined in 310 C.M.R. 16.02 and 19.006 and the Solid Waste Act.

87. “Solid Waste” is defined at 310 C.M.R. 16.02 and 19.006 as “useless, unwanted or discarded solid, liquid . . . material resulting from commercial, . . . agricultural, municipal, . . . or household activities that is abandoned by being disposed”

88. The Solid Waste Regulations at 310 C.M.R. 16.01(8)(a)8. state that it shall be a violation of 310 C.M.R. 16.00 for any person to “fail to comply fully with the applicable provisions of 310 C.M.R. 16.00 or with any authorization, modification, permit or other approval or order or other enforcement document issued pursuant to 310 C.M.R. 16.00”

89. The RCC Permit is a “permit” within the meaning of 310 C.M.R. 16.01(8)(a)8.

Storage and Handling of Food Materials Outdoors

90. Section V.J. of the RCC Permit and 310 C.M.R. 16.01(8)(a)8 of the Solid Waste Act prohibit food material, including Fresh Unwanted Food, from being handled or stored outdoors.

91. Section V.J. of the RCC Permit also requires “management/storage areas of the Operation at the Site” to be “maintained in a clean, orderly, and sanitary condition. . . .”

92. By leaving food material inside and stuck to the exterior of its outdoor compactors and containers stored at both the Facility and the Adjacent Property on at least four dates in July and August 2024, Feedback Earth failed to comply with Section V.J. of the RCC Permit, 310 C.M.R. 16.01(8)(a)8, and the Solid Waste Act.

Failing to Notify the Department

93. Section V.H.1.a. of the RCC Permit requires Feedback Earth to “notify the Department . . . of proposed changes in design or operations where . . . the Owner or Operator intends to recycle, compost or convert material(s) different from those materials for which [the RCC] Permit was granted.”

94. By failing to notify the Department prior to recycling/converting lobster shells, a material different from the materials for which the RCC Permit was granted, Feedback Earth violated Section V.H.1.a. of the RCC Permit, 310 C.M.R. 16.01(8)(a)8, and the Solid Waste Act.

95. By failing to notify the Department prior to installing the Grinder used to grind the lobster shells, which is a change in design or operations, Feedback Earth violated Section V.H.1.a. of the RCC Permit, 310 C.M.R. 16.01(8)(a)8, and the Solid Waste Act.

96. Section V.I. of the RCC Permit requires that, “[i]n the event the Operation is temporarily or permanently interrupted or discontinued for any reason, the Operator shall promptly and in a timely manner, notify [the Department] of the interruption/discontinuation”

97. By failing to notify the Department promptly and in a timely manner of a temporary interruption of the Dryer in late August 2024, Feedback Earth violated Section V.I. of the RCC Permit, 310 C.M.R. 16.01(8)(a)8, and the Solid Waste Act.

98. Section VI.N.6.b. of the RCC Permit mandates that Feedback Earth “notify the Department and the Board of Health in writing by no later than the close of the next business day, . . . of the following: . . . [a]ny incidents or disruptions which occur at the [Facility] that could affect the public health, safety, environment, or the Operation”

99. Section VI.N.6.c. of the RCC Permit mandates that Feedback Earth notify the Department of “[a]ny response to the Operation from other agencies, including without limitation the fire department”

100. By failing to report to the Department the September 23, 2024, fire at the Facility and that the Grafton Fire Department responded to the Facility on September 23, 2024, to put out the fire, Feedback Earth violated the RCC Permit, 310 C.M.R. 16.01(8)(a)8, and the Solid Waste Act.

Illegal Acceptance and Storage of Solid Waste

101. Section VI.A. of the RCC Permit, requires that “[a]ll food materials accepted at the [Facility] shall meet the definition of Fresh Unwanted Food as defined [in the RCC Permit].”

102. Spoiled food, lobster shells, and similar materials, are not within the definition of “Fresh Unwanted Food” as defined by the RCC Permit.

103. By accepting lobster shells and spoiled food since at least June 26, 2024, which do not constitute “Fresh Unwanted Food” as defined by the RCC Permit, for processing at the Facility, Feedback Earth violated Section VI.A. of the RCC Permit, 310 C.M.R. 16.01(8)(a)8, and the Solid Waste Act.

104. The spoiled food and lobster shells stored at the Facility are “solid waste” within the meaning of 310 C.M.R. 16.02 and 19.006.

105. The Solid Waste Act and 310 C.M.R. 19.042 prohibit the operation of a facility without a valid authorization to operate issued by the Department.

106. By handling and storing solid waste at the Facility since at least June 26, 2024, which is not authorized by the RCC Permit, Feedback Earth has been operating and continues to operate a solid waste facility without a valid authorization to operate issued by the Department in writing, in violation of the Solid Waste Act and its regulations thereunder at 310 C.M.R. 19.042.

COUNT III: CREATION OF A PUBLIC NUISANCE

107. The Commonwealth repeats and realleges paragraphs 1 through 107 of this Complaint.

108. Pursuant to G.L. c. 12, §§ 7 and 11D, and common law, the Attorney General is authorized to seek abatement of a public nuisance.

109. A public nuisance is an unreasonable interference with the public health, the public safety, the public peace, the public comfort, or the public convenience, particularly given circumstances and the character of the area affected.

110. The foul, noxious odors emanating from the Facility are offensive and obnoxious to the members of the public living and working in the neighborhoods for several miles surrounding the Facility.

111. The foul, noxious odors emanating from the Facility substantially and adversely interfere with and negatively affects the comfort and enjoyment of the lives and property of the members of the public living and working in the neighborhoods for several miles surrounding the Facility.

112. The foul, noxious odors emanating from the Facility are unreasonable given the surrounding neighborhoods.

113. Feedback Earth's emission of such odors from its Facility is harmful to and inconsistent with the use of the surrounding residential neighborhood.

114. Feedback Earth is therefore creating a public nuisance, which the Court has equitable power to enjoin.

PRAYER FOR RELIEF

WHEREFORE, the Commonwealth requests that this Court grant the following relief:


- A. ISSUE a short order of notice for a preliminary injunction;
- B. ORDER, after hearing on the Commonwealth's motion for a preliminary injunction, Feedback Earth to:
 - 1. Immediately cease and desist from bringing any solid waste and other unauthorized materials, such as lobster shells, onto the Facility;
 - 2. Immediately take such action as the Department directs to abate such nuisance;

3. Immediately cease and desist from creating a public nuisance through odor emissions from the Facility; and
 4. Comply with the Plan Approval, the RCC Permit, the 2022 ACOP, and the IOMP.
- C. ORDER, after judgment, Feedback Earth to permanently comply with the terms of the preliminary injunction;
- D. ENTER judgment against Feedback Earth for civil penalties under the Clean Air Act and its regulations in an amount up to \$25,000 dollars per day, per violation;
- E. ENTER judgment against Feedback Earth for civil penalties under the Solid Waste Act and its regulations in an amount up to \$25,000 dollars per day, per violation; and
- F. GRANT such other relief as the Court deems appropriate.

Respectfully submitted,

COMMONWEALTH OF
MASSACHUSETTS
By its attorney,

ANDREA JOY CAMPBELL
ATTORNEY GENERAL



Jillian M. Riley, BBO #681846

Zeus H. Smith, BBO #712609

Assistant Attorneys General
Environmental Protection Division
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
(617) 963-2424
Jillian.riley@mass.gov
Zeus.smith@mass.gov

Dated: October 16, 2024

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT
CIVIL ACTION NO. _____ - ____

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

FEEDBACK EARTH, INC.,

Defendant.

**COMMONWEALTH'S MOTION
FOR A SHORT ORDER OF
NOTICE**

RECEIVED
OCT 16 2024
SUPERIOR COURT - CIVIL
JOHN E. POWERS, III
ACTING CLERK/MAGISTRATE

Pursuant to Superior Court Rule 9A(e)(1), Plaintiff Commonwealth of Massachusetts moves this Court to issue a Summons and Order of Notice that Defendant Feedback Earth, Inc. ("Feedback Earth") answer the Complaint and appear for a hearing on Commonwealth's Motion for a Preliminary Injunction at __:00 pm on October __, 2024. In support of this motion Plaintiff states that Feedback Earth's illegal operating practices currently cause noxious public nuisance odors that disrupt local businesses and significantly interfere with the use and enjoyment of residential properties in Grafton and neighboring communities. Over the past four months, the Massachusetts Department of Environmental Protection has received hundreds of complaints from as far away as 4.6 miles from the Feedback Earth facility. Now, Feedback Earth appears to be escalating its behavior rather than attempting in good faith to remedy its violations of the Massachusetts Clean Air Act, G.L. c. 111, §§ 142A-O, the Massachusetts Solid Waste Management Act, G.L. c. 111, § 150A, and permits issued to it under these laws.

An expedited hearing is required to remedy substantial ongoing harm to the public interest.

Respectfully Submitted,

COMMONWEALTH OF MASSACHUSETTS,

By its attorney,

ANDREA JOY CAMPBELL
ATTORNEY GENERAL,

By: 

Jillian M. Riley, BBO #681846

Zeus H. Smith, BBO #712609

Assistant Attorneys General

Environmental Protection Division

Office of the Attorney General

One Ashburton Place

Boston, Massachusetts 02108

617-963-2424/2426

Jillian.Riley@mass.gov/Zeus.Smith@mass.gov

Dated: October 16, 2024

CERTIFICATE OF SERVICE

I, Zeus Smith, certify, pursuant to Superior Court Rule 9A(d)(1) that on October 16, 2024, I made a good faith effort to contact and confer with the Defendant regarding the substance of this Motion, that I spoke with counsel for the Defendant, and that the Defendant is considering the terms of the Commonwealth's proposed injunctive order with the expectation that the Parties will report any agreement on terms to the Court as of the hearing scheduled on this Motion.

I further certify that on October 16, 2024, I will serve the foregoing document contemporaneously upon filing, by sending a copy thereof by email to:

For the Defendant:

Edward V. Colbert III, Esq.

Brian Haney, Esq.

Casner & Edwards, LLP

303 Congress Street

Boston, MA 02210

colbert@casneredwards.com/haney@casneredwards.com


Zeus Smith

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO.

COMMONWEALTH OF
MASSACHUSETTS,

Plaintiff,

v.

FEEDBACK EARTH, INC,

Defendant.

COMMONWEALTH OF
MASSACHUSETTS' MOTION FOR
ORDER ISSUING PRELIMINARY
INJUNCTION

RECEIVED
OCT 16 2024
SUPERIOR COURT - CIVIL
JOHN E. POWERS, III
ACTING CLERK MAGISTRATE

Pursuant to Mass. R. Civ. P. 65(b), the Commonwealth of Massachusetts (the "Commonwealth") hereby moves that this Court enter a preliminary injunction against Feedback Earth in the form attached as "Exhibit 1." In support of this Motion, the Commonwealth submits affidavits from the Department of Environmental Protection (the "Department") and nearby neighbors. The Commonwealth also submits a Memorandum of Law in Support of the Commonwealth's Motion for a Preliminary Injunction (the "Memorandum"), filed herewith.

As set forth in the Commonwealth's Complaint in this action, also filed herewith, the Memorandum, and the affidavits, Feedback Earth's facility in Grafton, Massachusetts (the "Facility") emits putrid odors that permeate the surrounding properties and residential neighborhoods and create a public nuisance. These putrid odors are the result of Feedback Earth's repeated and regular violations of the Massachusetts Clean Air Act, G.L. c. 111, §§ 142A-O, the Massachusetts Solid Waste Management Act, G.L. c. 111, § 150A, and permits issued to it under these laws.

Over the years, the Department has sought to bring Feedback Earth into

compliance with the relevant laws and permits through operating agreements and enforcement mechanisms. Despite these efforts, Feedback Earth continues to operate in an illegal and unsanitary manner. This has resulted in the emission of increasingly noxious odors to the detriment of residents and businesses in Grafton, as well as in surrounding communities. As a result of these odors, Feedback Earth has disrupted the peace and comfort of nearby neighbors causing them in some cases to experience headaches, change plans, move indoors, and close their windows.

The Commonwealth seeks the preliminary injunctive relief requested and set forth in Exhibit 1. Unless the preliminary injunction issues, nuisance conditions will likely continue to fester at the Facility. Additionally, the health and safety of the animals will go unchecked. All of the requested relief sought by the Commonwealth is in the public interest because it will assure compliance with solid waste and clean air laws designed to promote and protect public health, safety, and the environment.

WHEREFORE, the Commonwealth respectfully requests that this Court allow this Motion and issue a preliminary injunction in the form attached as Exhibit 1.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS

By its attorney,

ANDREA JOY CAMPBELL
ATTORNEY GENERAL,

By:



Jillian M. Riley, BBO #681846

Zeus H. Smith, BBO #712609

Assistant Attorneys General

Office of the Attorney General

One Ashburton Place

Boston, Massachusetts 02108

617-963-2424/2426

Jillian.Riley@mass.gov/Zeus.Smith@mass.gov

Dated: 10/16/2024

CERTIFICATE OF SERVICE

I, Zeus Smith, certify, pursuant to Superior Court Rule 9A(d)(1) that on October 16, 2024, I made a good faith effort to contact and confer with the Defendant regarding the substance of this Motion, that I spoke with counsel for the Defendant, and that the Defendant is considering the terms of the Commonwealth's proposed injunctive order with the expectation that the Parties will report any agreement on terms to the Court as of the hearing scheduled on this Motion.

I further certify that on October 16, 2024, I will serve the foregoing document contemporaneously upon filing, by sending a copy thereof by email to:

For the Defendant:

Edward V. Colbert III, Esq.

Brian Haney, Esq.

Casner & Edwards, LLP

303 Congress Street

Boston, MA 02210

colbert@casneredwards.com/haney@casneredwards.com


Zeus Smith

10/16/2024
Date

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO. _____

COMMONWEALTH OF
MASSACHUSETTS,

Plaintiff,

v.

FEEDBACK EARTH, INC,

Defendant.

PRELIMINARY INJUNCTION

This matter having come before the Court on the Commonwealth of Massachusetts's Motion for a Preliminary Injunction, pursuant to Mass. R. Civ. P. 65(b), and on the affidavits of residents of Grafton, Massachusetts and John Volkerding, Thomas Hannah, Randa Kallin, and Michael Penny of the Massachusetts Department of Environmental Protection (the "Department"), and exhibits in support thereof, the Court hereby **ORDERS** that the Defendant Feedback Earth Inc., and its officers, agents, servants, employees, and attorneys, shall:

1. Immediately cease and desist from bringing onto the Feedback Earth facility at 109 Creeper Hill Road, Grafton, Massachusetts ("Facility"), any solid waste or any other unauthorized materials brought to the Facility for recycling or conversion, such as lobster shells;
2. Immediately clean up all unprocessed food materials in and around the Facility, and legally dispose of all of Feedback Earth's solid waste at and around the Facility, including all lobster shells;
3. Immediately cease and desist from creating a public nuisance through odor

emissions, if necessary, by terminating operations until such time as operations may continue without nuisance odors;

4. Immediately take all actions to ensure that the odor hotline required by the 2022 Administrative Consent Order with Penalty ("Hotline") operates consistent with the terms of the Order and cease all actions that discourage Hotline reports, including by publicizing alternative reporting methods and changing Hotline phone numbers without Department authorization;
5. Immediately cease site visits by Feedback Earth officers or employees to the residences of callers to the Hotline without written permission from the caller for such visit; and
6. Comply with the following regulatory documents governing operations at the Facility approved by the Department, including in particular all provisions requiring Feedback Earth to notify the Department before cessation of operations and modification of operations or equipment: (1) the Non-Major Comprehensive Plan Approval; (2) the Recycling, Composting, or Conversion Permit; (3) the 2022 Administrative Consent Order with Penalty; and (4) the Interim Operations and Management Plan.

By the Court:

Justice, Superior Court

Date

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO. _____

COMMONWEALTH OF MASSACHUSETTS,)

Plaintiff,)

v.)

FEEDBACK EARTH, INC,)

Defendant.)

RECEIVED
OCT 16 2024
SUPERIOR COURT - CIVIL
JOHN E. FOWLER, III
ACTING CLERK/MAGISTRATE

**COMMONWEALTH'S
MEMORANDUM OF LAW IN
SUPPORT OF ITS MOTION FOR A
PRELIMINARY INJUNCTION**

The Commonwealth of Massachusetts ("Commonwealth") seeks preliminary injunctive relief in this case to abate the continued egregious public nuisance conditions caused by Defendant Feedback Earth, Inc.'s ("Feedback Earth") facility at 109 Creeper Hill Road, Grafton, Massachusetts (the "Facility") and to ensure prompt compliance with conditions of permits issued to Feedback Earth by the Massachusetts Department of Environmental Protection (the "Department") under the Massachusetts Clean Air Act, G.L. c. 111, §§ 142A-O ("Clean Air Act") and the Massachusetts Solid Waste Management Act, G.L. c. 111, § 150A ("Solid Waste Act").

Since Feedback Earth began operation in June of 2021, the Facility has periodically emitted noxious odors that have created a condition of public nuisance and have severely impacted the use and enjoyment of properties owned by local residents and businesses. Since June 2024, Feedback Earth's odors have substantially increased in strength and frequency and now regularly overwhelm residents in Grafton and neighboring towns. The Facility's ongoing operations have caused some level of malodor approximately every other day, at any time of day.

Residents report stomach-churning odors that range from “burning yeast,” to “rotten fish” or “dead animals.” These smells catch in clothing and hair and linger throughout the day. The odors are so strong that residents sometimes must press shirts to their faces in their yards and while leaving their homes. Neighbors complain that they can no longer host social gatherings outside, experience migraines, and are occasionally woken at night by what some describe as the smell of rotting corpses.

As set forth in the Commonwealth’s proposed order, attached to its Motion for Preliminary Injunction, the Commonwealth requests that the Court order Feedback Earth to immediately and fully abate the nuisance conditions present at the Facility and return to compliance with its permits and other relevant regulatory requirements of the Clean Air Act and Solid Waste Act. Given Feedback Earth’s extensive history of noncompliance in the face of administrative action, unless the preliminary injunction issues, public nuisance conditions will likely continue to fester at the Facility, disrupting nearby businesses and doing substantial harm to Grafton residents’ right to the quiet enjoyment of their homes and properties. The requested relief is in the public interest because it will promote and protect public health, safety, and the environment while assuring compliance with the Commonwealth’s solid waste and clean air laws.

FACTS IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

Description of the Facility

On June 16, 2021, Feedback Earth purchased the Facility. *See* Affidavit of Michael Penny at ¶ 6 (“Penny Aff.”), submitted herewith. The Facility is located on a 4.2-acre parcel comprised of three primary buildings, as well as a small equipment storage hut. *Id.*, ¶ 8. The Facility directly abuts industrial properties, which are surrounded by several residential neighborhoods

within a mile of the Facility. *See* Affidavit of John Volkerding at ¶ 28 (“Volkerding Aff.”), submitted herewith. These residential neighborhoods include: Flintwood Estates to the northeast; the area around Hawthorne Drive to the south of the Facility; and the Hollywood Drive neighborhood to the southeast. *Id.* ¶¶ 33, 34, 35. There is also a commercial area which contains restaurants and other businesses to the southeast of the Facility. *Id.*

The Facility processes “Fresh Unwanted Food” from manufacturers, grocery stores, institutions, and restaurants into animal feed.¹ Penny Aff., ¶ 7-8. Unwanted food arrives either as loose, bulk material typically delivered in compactors or dump trailers, or on pallets in enclosed trailers. *Id.* All received materials are ground and homogenized before undergoing a two-step cooking process meant to pasteurize and dehydrate food material to stabilize it. *Id.* The Facility includes seven large exhaust stacks from the building where the cooking and cooling occurs, all of which release emissions to the air. *See* Affidavit of Thomas Hannah at ¶ 8 (“Hannah Aff.”) submitted herewith. Surrounding the Facility’s three buildings is a large, unpaved lot used for staging, deliveries, and departures. Penny Aff., ¶ 8. In violation of permit provisions, Feedback Earth also uses this lot for storage of food material deliveries. *Id.*, ¶ 15; Volkerding Aff., ¶ 23.

The Nuisance Odor

From the moment Defendant began operation of the Facility in 2021, Feedback Earth started subjecting nearby businesses and residents to rancid odors on a regular basis. *See* Affidavit of Andrew Russo at ¶ 4 (“Russo Aff.”) submitted herewith; Volkerding Aff., ¶ 21.

Once Feedback Earth began accepting and processing soy waste for the first time in November and December of 2021, odors from the Facility worsened and the Department began

¹ Fresh Unwanted Food is “material that has been approved for human consumption in the United States and is not currently solid waste.” Volkerding Aff., ¶ 14.

to take action at the Facility. Volkerding Aff., ¶¶ 22 – 23; Hannah Aff., ¶ 10; *see also* Affidavit of Meghan Pavasaris at ¶ 5, (“Pavasaris Aff.”) submitted herewith. During this time, residents and nearby businesses in Grafton and surrounding municipalities suffered suffocating smells.

Pavasaris Aff., ¶ 5; Russo Aff., ¶ 5. Department personnel verified noxious odors originating from the Facility. Volkerding Aff., ¶ 22 (referencing official inspection report that describes “pungent, acidic, putrid, and yeast-like” odors); Hannah Aff., ¶ 11 (describing vomitous odors that “clung to [his] clothing and that were objectionably noticeable long after” leaving the Facility). At the time, odors were so strong that one resident reports her friends fleeing to her home from their car while she manned the door, ready to slam it shut to prevent the smell from entering and lingering in her home. Pavasaris Aff., ¶ 5.

Prompted by the severity of these odors, the Department issued an Administrative Consent Order with Penalty (“ACOP”) to Feedback Earth in May 2022. Volkerding Aff., ¶ 16. Feedback Earth has violated that ACOP four times.² *Id.* In the years since, Feedback Earth’s public nuisance odors have continued. Pavasaris Aff., ¶ 5. Residents and businesses regularly report extremely rancid, rotting garbage smells. *See* Affidavit of Jessie Remillard at ¶ 8, (“Remillard Aff.”) submitted herewith; *see also* Affidavit of Randa Kallin at ¶ 16 (“Kallin Aff.”) submitted herewith. Neighbors describe – and Department personnel have verified – several other odors emitted from the Facility, including sour strawberry yogurt, rancid yeast, human feces, rotten fish, spoiled waffle cone, decaying bodies, burnt bread, and dead animal. Remillard Aff., ¶ 8; Pavasaris Aff., ¶ 8; Kallin Aff., ¶¶ 16, 21 – 24; Volkerding Aff. ¶¶ 30 – 35, 40, 43 – 44; *see also* Affidavit of Elaine Urban at ¶ 7, 10 (“Urban Aff.”) submitted herewith.

² The ACOP is discussed in greater detail *infra*.

Residents must endure these odors at any and all times of day. Some residents report morning odors that cut short walks or other activities. Remillard Aff., ¶ 12. Another recounted an instance during the day where she and her family left town to try and escape the odors, only to return to even stronger smells. Pavasaris Aff., ¶ 16 (recounting her family's return to a smell "like tuna left in the sun for a week and feet"). Many residents note impacts at night. *See* Affidavit of Elyssa Margwarth at ¶ 12 ("Margwarth Aff.") submitted herewith (noting that the smell is sometimes so strong she wakes up to it from her sleep); Pavasaris Aff., ¶ 15 (stating that if she wants to try to keep any windows open at night, she must spray Febreeze throughout the house).

The malodors from Feedback Earth vary in frequency. The worst odors, so strong that residents feel forced to remain indoors, occur at least three times a month. Remillard Aff., ¶ 13; Pavasaris Aff., ¶ 12. However, some report a stench of this strength weekly. Pavasaris Aff., ¶ 12. Noticeable but lesser odors occur several times a week. Remillard Aff., ¶ 13; Urban Aff., ¶ 7; *see also* Affidavit of Shannon Wnukowski at ¶ 16 ("Wnukowski Aff") submitted herewith.

And when Feedback Earth's odors do arise, they severely impact their neighbors' lives and property. For example, some residents moved to their neighborhoods precisely for access to outdoor spaces and resources they are now unable to enjoy. Remillard Aff., ¶ 5 (describing access to the outdoors as a significant factor in her and her family's decision to purchase their home in north Grafton); Pavasaris Aff., ¶ 13 (citing her home's large outdoor space as part of the reason she and her family purchased the house). Yards, patios, firepits, makeshift soccer fields, and children's clubhouses are all often unusable. Pavasaris Aff., ¶ 13. Neighbors no longer go on walks, whether to commute, as a leisure activity, or to walk their pets. Margwarth Aff., ¶¶ 11, 16. Residents who otherwise rely on their outdoor spaces as dining areas are forced to retreat inside

rather than sit through the stench. *Id.*, ¶ 10 (noting that she and her family ordinarily use their “outdoor picnic area like a dining room,” both for themselves and for guests, but have been unable to do so due to the odors); Remillard Aff., ¶ 12.

These odors also have significantly deleterious effects on residents’ mental and physical health. For some, the fetid odors directly trigger or exacerbate headaches and migraines. Urban Aff., ¶ 9; Wnukowski Aff., ¶ 6. For others, the inability to utilize outdoor spaces prevents them from engaging in therapeutic outdoor activities. Pavasaris Aff., ¶ 7 (discussing how the smell prevents her from gardening, which ordinarily helps alleviate her migraines and headaches); Remillard Aff., ¶ 16 (noting that despite a chronic condition that requires participation in physical movement, she can no longer walk outside due to the stench).

The constant smells also prevent children from enjoying their neighborhoods. *Id.*, ¶ 15 (describing several outdoor family activities that are often cut short due to odors from Feedback Earth); Margwarth Aff., ¶ 11. Children cancel plans to spend time outside with friends just to avoid the stench. Wnukowski Aff., ¶ 13.

Many residents no longer even consider opening their windows due to these odors. Margwarth Aff., ¶ 13; Wnukowski Aff., ¶ 12; *See also* Affidavit of Erika Dulmaine at ¶ 8 (“Dulmaine Aff.”) submitted herewith. Some report that this requires them to run their air conditioners even when cool air is available outside, which increases their utility bills. *Id.*; Remillard Aff., ¶ 15; Margwarth Aff., ¶ 13. For at least one resident, the constant nuisance odors emitted by Feedback Earth have made life so untenable that she and her husband are now considering selling their property. Dulmaine Aff., ¶ 4, 9.

These odors similarly impact the functions and operation of local businesses. Russo Aff., ¶ 20; Urban Aff., ¶¶ 11, 13. Business owners cannot bring potential clients to their properties due

to these odors, even when they have specifically invested in creating attractive meeting spaces. Russo Aff., ¶ 18. A local daycare owner must regularly explain the origin of the smell to concerned parents. Urban Aff., ¶ 8. A business adjacent to Feedback Earth has had to shut down because its employees can no longer bear Feedback Earth's noxious odors. *Id.* ¶ 19.

Nuisance Odors Worsen

Since around June 26, 2024, when Feedback Earth began to accept large quantities of lobster shells, Feedback Earth's nuisance odors have become significantly more pungent and putrid. Remillard Aff., ¶ 9; Kallin Aff., ¶ 14 (documenting an increase in official complaints); Margwarth Aff., ¶¶ 8, 14 (describing experiencing a variety of worsened smells three to four days a week); Russo Aff., ¶ 16 (stating that the "past four months since Feedback Earth began accepting lobster shells have been particularly horrible"). In addition to the previous rotting garbage odors that neighbors regularly reported, multiple residents and businesses describe a frequent, overpowering stench of rancid seafood, rotting lobster, and vomit. *Id.* ¶ 10; Margwarth Aff., ¶ 15; Urban Aff., ¶ 10. The smell of spoiled fish is often sickeningly strong. Pavasaris Aff., ¶ 11; Volkerding Aff., ¶ 39 (stating that the odor "was noxious and made [him] want to vomit," "smelled like a combination of rotting meat and lobster," and "stayed in [his] nostrils for several hours until [he] returned home and showered"). Some residents report that Feedback Earth's odors are some of the worst smells can recall. *Id.*; Margwarth Aff., ¶ 18 (describing a Feedback Earth delivery truck dripping putrescent liquid that smelled so bad she and her husband had to pull over to avoid vomiting in the car).

The potency of these odors results in noticeable smells up to 4.6 miles away from the Facility, making it difficult for some Grafton residents to escape these odors. Kallin Aff., ¶ 18; Wnukowski Aff., ¶ 22 (noting that she and her husband detected Feedback Earth odors

approximately 2.25 miles from the Facility). Residents in Worcester, Millbury, Shrewsbury, and Sutton are also subject to these odors. Kallin Aff., ¶ 18; Volkerding Aff., ¶ 22.

Feedback Earth's operations cause these odors; prior to Feedback Earth's operation of the Facility and subsequent permit noncompliance, nearby residents did not smell odors of this kind, frequency, and severity. Margwarth Aff., ¶ 3; Remillard Aff., ¶ 6; Wnukowski Aff., ¶ 5; Urban Aff., ¶ 5; Russo Aff., ¶ 4; Pavasaris Aff., ¶ 4. Department inspectors have repeatedly smelled rancid yeast, garbage, or spoiled fish onsite at the Facility and then noted that same smell far from the Facility. Volkerding Aff., ¶ 40 – 41, 43 – 44; Kallin Aff., ¶ 22; Hannah Aff., ¶ 15.

For residents of Grafton and surrounding communities, this resulted in yet another summer where they were unable to enjoy outdoor quality time with their families because of Feedback Earth's continued failure to abate its nuisance odors. Remillard Aff., ¶ 15. Instead, residents are left with little recourse to avoid the stench emanating from the Facility beyond remaining sealed in their homes. Wnukowski Aff., ¶ 23 (describing feeling that Grafton residents must stay in their homes like caves to avoid the smells). Relief is not forthcoming; in the view of the Department, Feedback Earth's current deodorizing system is not effective nor reliable at mitigating odors. Hannah Aff., ¶ 18 (noting that the Department issued Feedback Earth a Notice of Technical Deficiency due to continuous failures to implement an effective odor control system). These odors are ongoing and will likely continue: Grafton residents continue to experience horrific odors emitted from the Facility. Kallin Aff., ¶ 15 (referencing multiple complaints received through September 14th.³

³ This Memorandum is written based upon complaints made as of September 14, 2024. Since September 14, 2024, the official complaint hotline continues to receive significant numbers of complaints alleging interference with use and enjoyment of property.

Permit Violations

In addition to its public nuisance odors, Feedback Earth has a significant enforcement history related to its permits under the Clean Air Act and the Solid Waste Act. Feedback Earth holds two relevant environmental permits: a Solid Waste Recycling, Composting, and Conversion permit (“RCC Permit”), pursuant to the Solid Waste Act; and a Non-Major Comprehensive Plan Approval (“Plan Approval”), pursuant to the Clean Air Act. *Id.*, ¶¶ 11-13. The RCC Permit sets forth requirements to allow Feedback Earth to recycle food waste into animal feed. 310 C.M.R. 16.05. The Plan Approval sets forth conditions governing Feedback Earth’s air emissions from its recycling process. 310 C.M.R. 7.00. As discussed above, Feedback Earth’s repeated violations of these permits resulted in the ACOP and four stipulated penalty demands.⁴

Acceptance of Odor-Causing Materials without Proper Notification

Subsequent to the Department’s penalty demands, Feedback Earth began accepting lobster shells. The RCC Permit, however, only authorizes Feedback Earth to accept Fresh Unwanted Food. Volkerding Aff., ¶ 14. As they are not approved for human consumption, lobster shells do not meet the definition of Fresh Unwanted Food as established by the Department. *Id.*, ¶ 27. Additionally, the Facility is required to notify the Department three full business days before processing any Fresh Unwanted Food which has the potential to cause off-site odors, unless Feedback Earth has already demonstrated that it can successfully process those products without causing odors. *Id.*, ¶ 20. Feedback Earth nevertheless has accepted large quantities of lobster shells since at least June 26, 2024, without providing prior notification to the Department. Kallin Aff., ¶ 14; Volkerding Aff., ¶¶ 27, 24 – 37. These lobster shells have caused odors off-site

⁴ See *supra* at pg. 4.

of the Facility. Volkerding Aff., ¶ 39; Kallin Aff., ¶ 14 (noting that in a span of eleven weeks following Feedback Earth's acceptance of lobster shells, the number of odor complaints was approximately two and a half times the number Feedback Earth had received in the preceding two years).

Failure to Notify the Department of Odor-Causing Changes in Operations

The RCC Permit also contains multiple other notice requirements that Feedback Earth has violated that were intended to provide the Department an opportunity to review and respond to potential problems at the Facility. To prevent the generation of public nuisance odors, Section V.H.1.a. of the RCC Permit requires Feedback Earth to notify the Department of any proposed changes in design or operations where Feedback Earth intends to convert materials different from those for which the RCC Permit was granted. Feedback Earth did not notify the Department of its installation of a standalone grinder by which Feedback Earth processes lobster shells, which is a change of design and operations. Volkerding Aff., ¶ 38. Section V.I. of the RCC Permit similarly requires Feedback Earth to notify the Department of any temporary or permanent interruptions or discontinuations of operations. Feedback Earth failed to notify the Department of a temporary interruption of operations in August 2024. *Id.*, ¶ 55. Section VI.N.6.c. of the RCC Permit mandates that Feedback Earth notify the Department of any response to its operations by other agencies, including a fire department. The Grafton Fire Department responded to an incident at the Facility on September 23, 2024. *Id.* ¶ 56. Feedback Earth failed to notify the Department of the September 23, 2024 response to a recent fire at the Facility. *Id.*

Unsanitary and Odor Causing Operations

The RCC Permit imposes storage and cleanliness requirements on Feedback Earth in part to reduce the possibility of odors. The RCC Permit and other regulatory documents mandate that

Feedback Earth refrain from storing or handling Fresh Unwanted Food outdoors. Volkerding Aff., ¶¶ 23, 42. Since at least June 26, 2024, Feedback Earth has stored and handled deliveries of food material in its yard. Volkerding Aff., ¶ 42; Penny Aff., ¶¶ 15, 19, 23. Additionally, Feedback Earth contracts with adjacent properties to store Fresh Unwanted Food outdoors. Volkerding Aff., ¶ 45.

The RCC Permit further requires Feedback Earth to operate without creating unsanitary conditions. *Id.*, ¶ 18. Feedback Earth operates its facility in an unsanitary fashion by, *inter alia*, attempting to process spoiled food, permitting food waste to pile on facility floors, and as discussed, allowing food waste outside of Facility buildings. Volkerding Aff., ¶¶ 42, 45; Penny Aff., ¶¶ 11 – 13, 16 – 18, 19 – 22; Hannah Aff., ¶ 16. These and other inadequate operating practices at the Facility directly result in nuisance odors. Volkerding Aff., ¶¶ 22, 38 – 41; Penny Aff., ¶¶ 16, 20; Hannah Aff., ¶¶ 11, 16, 18. The improper maintenance of the Facility further results in other, more tangible, impacts on neighboring properties including trash, dust, and mice. Russo Aff., ¶¶ 7 – 8, 16 (describing constant issues with plastic litter on his property, repeated instances of dust coating buildings and vehicles, and issues with mice); Kallin Aff., ¶ 8. These unsanitary conditions and operating practices continue to date.

ARGUMENT

I. The Legal Standard Applicable for a Motion for Preliminary Injunction by the Commonwealth.

The legal standard applicable to a request by the Attorney General for preliminary relief to enforce a statute or a regulatory scheme to protect the public interest is well established. *See Commonwealth v. Mass. CRINC*, 392 Mass. 79, 87-90 (1984). A court reviewing such a request

for a preliminary injunction is required to determine whether “the requested relief promotes the public interest, or, alternatively, [whether] the equitable relief will not adversely affect the public.” *Id.* at 89 (citations omitted). The court must also consider “whether there is a likelihood of statutory violations and how such statutory violations affect the public interest.” *Id.* The Commonwealth need not, however, show that without the preliminary relief requested, the public interest will suffer immediate and irreparable harm incapable of remediation by a final judgment ordering permanent injunctive relief or remedies at law. *See id.* at 89-90 (“The Attorney General is not required to demonstrate irreparable harm concerning those activities of the defendant [] which probably resulted in violations of our General Laws, and which may adversely affect the public interest.”).

Thus, in reviewing the Commonwealth’s request for preliminary relief, the Court need first consider and determine whether Feedback Earth has likely violated the Solid Waste Act and the Clean Air Act or caused a public nuisance. If the Court determines Feedback Earth has violated these Acts or has created public nuisance conditions, the Court must consider if it is in the public interest to require Feedback Earth to immediately abate the ongoing violations and public nuisance conditions at the Facility. Here, the Commonwealth has met this standard by demonstrating that Feedback Earth’s ongoing noxious odors and blatant and consistent violations of regulatory and permit requirements are violations of law, and that ceasing the years-long pattern of disruptive violations is in the public interest.

II. Feedback Earth's Permit Violations and Public Nuisance Odors Are Violations of Law

Each of the many times described above that Feedback Earth violated the Solid Waste Act, the Clean Air Act, the RCC Permit, or the Plan Approval and each time Feedback Earth created public nuisance odors amount to a violation of law and supports the Court's grant of the Commonwealth's Motion. *See id.* at 89.

A. Violations of the Solid Waste Act

The Solid Waste Act governs the assignment of sites for solid waste facilities in order to protect human health, safety, welfare and the environment.⁵ G.L. c. 111, § 150A. Regulations promulgated pursuant to the Solid Waste Act authorize the recycling and reuse of certain products, including Fresh Unwanted Food, so long as recyclers apply for and are granted a permit often called a RCC permit. 310 C.M.R. 16.00 *et seq.* and 310 C.M.R. 19.000 *et seq.* ("Solid Waste Act Regulations"). A permittee's recycling and reuse operations are only permitted under the Solid Waste Act so long as they comply with their RCC permit. 310 C.M.R. 16.05; 310 C.M.R. 16.01(8)(a)8.

In this case, Feedback Earth has repeatedly violated its RCC Permit as set forth in detail above at pages 2 through 11, including by processing lobster without notifying the Department, accepting spoiled food, and storing waste outdoors. The Commonwealth has provided extensive

⁵ In addition to the Department's statutory authority to protect the public interest by regulating solid waste activity, the Massachusetts Constitution, Art. XLIX, provides that "[t]he people shall have the right to clean air and water . . . and the natural, scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the . . . water, air and other natural resources is hereby declared to be a public purpose." *See also* G.L. c. 12, § 11D, which charges the Environmental Protection Division of the Attorney General's Office with the authority to "prevent or remedy any damage to the environment caused by any person," in an action to enforce any Massachusetts statute or regulation, to seek injunctive relief, or to secure the abatement of a public nuisance.

affidavit testimony and photographs from Department inspectors documenting these strict liability permit violations. This is sufficient to establish a likelihood that Feedback Earth has violated the RCC Permit and the Solid Waste Act.

B. *Violations of the Clean Air Act*

Pursuant to the Massachusetts Clean Air Act, the Department adopted regulations at 310 C.M.R. 7.00 *et seq.* (“Air Regulations”) to prevent air pollution or contamination of the atmosphere. G.L. c. 111, § 142A. Air pollution is defined as “the presence in the ambient air space of one or more air contaminants... in such concentrations and of such duration as to **cause a nuisance ... and unreasonably interfere with the comfortable enjoyment of life and property or the conduct of business.** 310 C.M.R. 7.00 (emphasis added). The Air Regulations define odor as an air contaminant. 310 C.M.R. 7.00. To prevent the emission of air contaminants sufficient to constitute air pollution, the Air Regulations generally require anyone who wishes to operate a facility or equipment that emits air pollutants to apply for, possess, and abide by a Plan Approval. 310 CMR 7.02(1)(b). To minimize odor, the Air Regulations require careful storage and handling of any material that might cause or contribute to a condition of air pollution. 310 C.M.R. 7.09(4).

Feedback Earth has violated its Plan Approval, the Air Regulations, and the Clean Air Act through, among other things, regular emissions of nuisance odors, repeated breaches of the conditions of its Plan Approval, and ongoing failures to properly handle and store material. The considerable affidavit and photographic evidence assembled and submitted by the Commonwealth above at pages 2 through 11 is sufficient to demonstrate a likelihood that Feedback Earth has violated its Plan Approval and the Clean Air Act.

C. Creation of a Public Nuisance

The Commonwealth has likewise demonstrated that Feedback Earth's operations created a public nuisance in the surrounding residential neighborhoods beginning as early as the Summer of 2021. It is long established in Massachusetts that an action by the Commonwealth is appropriate where a public offense is done in "such place and in such manner that the aggregation of private injuries becomes so great and extensive as to constitute a public annoyance and inconvenience, and a wrong against the community." *Wesson v. Washburn Iron Co.*, 95 Mass. (13 Allen) 95, 100–104 (1866). The odor emissions at issue in this case is just that kind of public offense. As detailed above, the stench generated by the Facility has disrupted many neighboring residents' peace and comfort as well as their use of their property. It has caused nearby residents to change outdoor plans, leave gardens and yards untended, close windows in the summer, move outdoor activities inside, flee their properties, stop inviting guest to their homes, and induced nausea, headaches, and migraines.

These impacts are recognized in Massachusetts as conditions of public nuisance. *See Rattigan v. Wile*, 445 Mass. 850 (2006) (defendant's activities which created unpleasant odor, noise, and visual condition caused unreasonable and substantial interference with another's interest in the private use and enjoyment of their property creating a private nuisance.); *see also Joyal v. Marlborough*, Not Reported in N.E.2d, 3 Mass.L.Rptr. 379, 1995 WL 809017, *1 (Mass. Super. 1995) (enjoining operation of a sewage sludge composting facility under both statutory and nuisance claims, where residents complained of being awakened from sleep with nauseating odors, "gagging" reactions, an inability to enjoy outdoor activities, and having to close windows and doors even on hot days to avoid the smell and gagging from the odor). Actionable nuisances include offensive odor, noise, and flies. *See Id.*; *see also* G.L. c. 150A (nuisance conditions, for

the purposes of solid waste facility regulation, include “odor, dust, fires, smoke, the breeding or harboring of rodents, flies or vermin.”).

In sum, by providing evidence of impacts on the residents of Grafton, recounting repeated permit violations, and establishing that the general public’s enjoyment of a clean environment is hindered by Feedback Earth’s illegal operations the Commonwealth has demonstrated that Feedback Earth is causing, and continues to cause, public nuisance conditions. *See Metropoulos v. MacPherson*, 241 Mass. 491, 135 N.E. 693 (1922) (“It is not necessary to show that Feedback Earth’s odors ‘should be such as to be dangerous to health; it is sufficient that the effluvia are offensive to the senses, and render habitation uncomfortable.’”)

III. Requiring Feedback Earth’s Compliance with the Law and its Permits is in the Public Interest.

Because the Commonwealth is likely to prove that Feedback Earth is liable for multiple violations of the Solid Waste Act, the Clean Air Act, and creating a public nuisance, the Court should issue an injunction if it is in the public interest, or alternatively, if it will not adversely affect the public. *See Mass. CRINC*, 392 Mass. At 89. Here, the Commonwealth is asking for simple compliance with Feedback Earth’s permits and cessation of a public nuisance. There are numerous reasons why mandating compliance with law and ending a public nuisance are in the public interest, including:

(1) directly responding to neighbors’ pleas for relief from ongoing harm to the use of their homes and yards. Promptly abating public nuisance odors that significantly negatively affect neighbors’ daily lives preserves public health, convenience, and comfort and is therefore in the

public interest. *See Sullivan v. Chief Just. for Admin. & Mgmt. of Trial Ct.*, 448 Mass. 15, 34 (2006).

(2) preventing harm to the environment. Feedback Earth's emission of public nuisance odors and mismanagement of solid waste has the potential to harm the environment. Requiring compliance with the Solid Waste Act and Clean Air Act would vindicate the public's well-established interest in an environment free from noxious odors and the illegal handling of solid waste.

(3) requiring compliance with the Solid Waste Act and Clean Air Act here would deter future violations by Feedback Earth as well as by other regulated parties from similar brazen violations of laws meant to protect the Commonwealth's residents and environment in the future; and

(4) as a matter of fundamental fairness, and to provide a level playing field to all others to whom these rules uniformly apply, it is in the public interest that Feedback Earth comply with the same generally applicable permitting rules by which everyone else must abide.

Without preliminary relief, the Facility will likely continue to significantly interfere with the public interest. Residents' "interest in having their residences comfortable and free from 'stench' is entitled to adequate injunctive protection." *Pendoley v. Ferreira*, 345 Mass. 309, 314, 187 N.E.2d 142, 146 (1963). Accordingly, the Commonwealth is seeking a preliminary injunction as necessary to protect the public interest, grant Grafton and neighboring communities a reprieve from noxious odors, and assure that public nuisance conditions do not continue at the Facility. Hence, this Court should issue a preliminary injunction substantially in the form attached to the Commonwealth's motion.

CONCLUSION

For all the foregoing reasons, the Commonwealth respectfully requests that this Court grant all the preliminary injunctive relief requested in the form attached as "Exhibit 1" to the Commonwealth's Motion for a Preliminary Injunction.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS

By its attorney,

ANDREA JOY CAMPBELL
ATTORNEY GENERAL,

By: 

Jillian M. Riley, BBO #681846

Zeus H. Smith, BBO #712609

Assistant Attorneys General

Environmental Protection Division

One Ashburton Place

Boston, Massachusetts 02108

jillian.riley@mass.gov

zeus.smith@mass.gov

Dated: October 16, 2024

CERTIFICATE OF SERVICE

I, Zeus Smith, certify, pursuant to Superior Court Rule 9A(d)(1) that on October 16, 2024, I made a good faith effort to contact and confer with the Defendant regarding the substance of this Motion, that I spoke with counsel for the Defendant, and that the Defendant is considering the terms of the Commonwealth's proposed injunctive order with the expectation that the Parties will report any agreement on terms to the Court as of the hearing scheduled on this Motion.

I further certify that on October 16, 2024, I will serve the foregoing document contemporaneously upon filing, by sending a copy thereof by email to:

For the Defendant:

Edward V. Colbert III, Esq.

Brian Haney, Esq.

Casner & Edwards, LLP

303 Congress Street

Boston, MA 02210

colbert@casneredwards.com/haney@casneredwards.com


Zeus Smith
