

**COMMONWEALTH OF MASSACHUSETTS**

**SUFFOLK, ss.**

**SUPERIOR COURT  
CIVIL ACTION  
NO. 2484CV01150**

**COMMONWEALTH OF MASSACHUSETTS**

**vs.**

**MARCHAND LLC d/b/a MARCHAND SEPTIC, MARCHAND  
ENVIRONMENTAL, and SMART RENTALS, MICHAEL L. MARCHAND,  
MICHAEL MARCHAND, and 25 ELM STREET LLC**

**MEMORANDUM OF DECISION AND ORDER ON  
PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION  
AND MOTION FOR ATTACHMENT**

The Commonwealth brings this action against the defendants for violations of various environmental statutes, codes, and regulations, including the Solid Waste Management Act, G.L. c. 111, § 150A, the Wetlands Protection Act, G.L. c. 131, § 40, and the Massachusetts Environmental Code, G.L. c. 21A, § 13, at 25 Elm Street in Blackstone (the "Property"). The Commonwealth alleges that the defendants have been disposing of solid waste and septage into protected environmental areas on the Property, and on abutting property owned by Blackstone, and operating an unpermitted solid waste collection and transfer business at the Property.

The matter is before the Court on the Commonwealth's Motion for a Preliminary Injunction (Paper 10) and Motion for Attachment of property of the corporate defendants in the amount of \$500,000 (Paper 9). The Court held a hearing on May 16, 2025, at which Michael Marchand testified, and the Commonwealth entered one exhibit. The Court held another hearing on August 18, 2025, at which Stephen Spencer, an Environmental Analyst at the Massachusetts Department of Environmental Protection (DEP), testified, and the Commonwealth entered four exhibits. After consideration of the testimony, Spencer's earlier filed affidavits, the exhibits, and the parties'

arguments, the court allows the Commonwealth's Motion for a Preliminary Injunction and Motion for an Attachment in the amount of \$250,000.

### **BACKGROUND**

The Property consists of fourteen acres of land. It is bordered to the west and south by twenty-five acres of land owned by the Town of Blackstone. There are wetlands on the western, eastern, and southern areas of the Property, including two streams. The streams join near the western line of the Property to form a single stream which flows west approximately 900 feet through Blackstone's land into the Mill River and Harris Pond. At least nine drinking water wells that supply drinking water to Blackstone's public water supply system are in the vicinity of Harris Pond. Five of these wells are downgradient from the Property, including three that are located approximately 1,200 feet from the Property. The Property is in a Zone II wellhead protection area.<sup>1</sup>

The Commonwealth presented evidence that the defendants operate an unpermitted solid waste collection and transfer business on the Property and dispose of solid waste into protected environmental areas on the Property. See Ex. 1 from 5/16/2025 hearing; Exs. 1-4 from 8/18/2025 hearing; Spencer's testimony. More specifically, the defendants collect solid waste from numerous communities in the area, including household trash through residential disposal bins, and construction and demolition debris, land-clearing wood waste (e.g., tree stumps and brush), earthen fill (e.g., soil and rocks), and asphalt, brick, and concrete rubble, through dumpster services. The defendants bring the solid waste onto the Property where they either transfer it into a larger vehicle that they drive off Property to a disposal facility or dump it on the Property or the adjacent property owned by Blackstone, including in or adjacent to wetland resource areas. The Commonwealth also

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<sup>1</sup> The DEP has established land areas, designated as zones, around water supplies that limit the uses permitted in those areas to protect groundwater used as a source of public drinking water supply from contamination. See 310 Code Mass. Regs. § 22.21. For example, around wells, wellfields, and springs, the following uses, among others, are prohibited: landfills and open dumps; automobile graveyards and junkyards; and facilities that generate, treat, store or dispose of hazardous waste. See 310 Code Mass. Regs. § 22.21(2).

presented evidence that the defendants handle septage<sup>2</sup> on the Property through a septage hauling and portable toilet business.

## DISCUSSION

When the government brings a suit to enforce a statute and requests a preliminary injunction, the Court must first determine whether there is a likelihood of success on the merits of the Commonwealth's claims and then determine whether "the requested order promotes the public interest, or, alternatively, that the equitable relief will not adversely affect the public." *LeClair v. Norwell*, 430 Mass. 328, 331-332 (1999). The Commonwealth is not required to show irreparable harm. *Id.* at 331.

### **I. Solid Waste Management Act**

The Solid Waste Management Act (SWMA) requires a solid waste management facility to be approved by the local board of health. See G.L. c. 111, § 150A ("No place in any city or town shall be maintained or operated by any person ... as a site for a facility ... unless, after a public hearing, such place has been assigned by the board of health of such city or town in accordance with the provisions of this section."). A facility includes "a refuse transfer station." *Id.* See also 310 Code Mass. Regs. § 19.006 (facility defined as "a site or works, and other appurtenances thereto, which is, 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"). Refuse includes all solid or liquid waste materials, including garbage, rubbish, and sludge. See G.L. c. 111, § 150A; 310 Code Mass. Regs. § 19.006 (refuse defined as solid waste; solid waste "means useless, unwanted or discarded solid, liquid or contained gaseous material resulting from industrial, commercial, mining, agricultural, municipal or household activities that is disposed

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<sup>2</sup> Septage is defined as "[m]aterial physically removed from any part of an on-site system, including, but not limited to, the solids, semi-solids, scum, sludge and liquid contents of a septic tank, privy, chemical toilet, cesspool, holding tank, or other sewage waste receptacle." 310 Code Mass. Regs. § 15.002.

or is stored, treated, processed or transferred pending such disposal ...."). A transfer station is defined as "a handling facility where solid waste is brought, stored and transferred from one vehicle or container to another vehicle or container for transport off-site to a solid waste treatment, processing or disposal facility." 310 Code Mass. Regs. § 19.006.

The defendants do not have approval from Blackstone's Board of Health to operate a solid waste management facility. Spencer testified that Blackstone would not grant approval for a solid waste management facility at the Property because it is in a Zone II wellhead protection area. The defendants do not contend that they are exempt from the requirement to obtain approval. See 310 Code Mass. Regs. § 19.013(1) ("Any facility or operation exempt from site assignment by 310 CMR 16.00: *Site Assignment Regulations for Solid Waste Facilities*, is exempt from the requirements of 310 CMR 19.000 ...."); 310 Code Mass. Regs. § 16.03(2) ("The activities listed in this subsection at 310 CMR 16.03(2)(a) through (c) do not require ... a facility permit pursuant to 310 CMR 19.000: *Solid Waste Management*, ... provided that the owner and operator incorporates best management practices in a manner that prevents an unpermitted discharge of pollutants to air, water or other natural resources of the Commonwealth, does not create a public nuisance, and does not present a significant threat to public health, safety or the environment." ).<sup>3</sup>

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<sup>3</sup> See more specifically, 310 Code Mass. Regs. § 16.03(2)(a):

3. Occasional Solid Waste Vehicle Layover. Property owned or leased by a solid waste transporter for purposes of truck storage or repair where trucks, trailers and other solid waste handling and transfer equipment containing loads of solid waste are occasionally stored for overnight or weekend layover prior to transportation to a solid waste management facility, provided that:

- a. there is no unloading or transfer of the solid waste from the container or vehicle to the ground or to another container or vehicle;
- b. the trucks or other solid waste handling and transfer equipment are sufficiently enclosed to prevent public nuisance conditions; and
- c. the zoning provisions applicable to the truck storage or repair site would not disallow such an activity or use.
- d. For purposes of 310 CMR 16.03(2)(a)3., occasionally means not a routine or scheduled activity, but the result of unexpected circumstances such as equipment breakdown or unscheduled closure of a solid waste management facility.

The Commonwealth submitted evidence that the defendants are operating the Property in violation of the SWMA. The defendants collect solid waste from numerous communities in the area, bring the solid waste onto the Property, transfer it into a larger vehicle, and drive it off the Property to a disposal facility even though they do not have approval to do so. See 310 Code Mass. Regs. § 19.006 (transfer station is “a handling facility where solid waste is brought, stored and transferred from one vehicle or container to another vehicle or container for transport off-site to a solid waste treatment, processing or disposal facility”). As the defendants are operating the Property as a solid waste collection and transfer station without approval, the Commonwealth has shown a likelihood of success on the merits of the claim for violations of the SWMA. In addition, enjoining the defendants from violating the SWMA will protect the public health as the Legislature has decreed that a local board of health should determine whether a particular facility is an appropriate place for solid waste. See *Board of Health v. Hagopian*, 37 Mass. App. Ct. 174, 177 (1994) (purpose of G.L. c. 111, § 150A is to protect public health).

## **II. Wetlands Protection Act**

Although the defendants remove some of the solid waste brought onto the Property, bringing it to another disposal facility, they also dump some of the solid waste onto the Property. See Exs. 1-4 from 8/18/2025 hearing. Under the Wetlands Protection Act (WPA), no person may “remove, fill, dredge or alter” wetlands and other types of property described in the act that border bodies of water without applying for and receiving an order of conditions from the local conservation commission. G.L. c. 131, § 40. See also 310 C.M.R. § 10.02(2)(a) & (b) (requirement to file notice of intent).

The Commonwealth has shown that the defendants are dumping solid waste material, including stone cuttings, wood waste, and black silt, in protected wetlands resource areas, including near two streams that join to form a single stream which flows into the Mill River and Harris Pond.

As the defendants do not have approval to do so, the Commonwealth has shown a likelihood of success on the merits of its claim that the defendants are violating the WPA. Enjoining the defendants from violating the WPA will protect the public health as some of the protected wetlands into which the defendants are dumping feed into Harris Pond and there are at least nine drinking water wells that supply drinking water to Blackstone's public water supply system in the vicinity of Harris Pond. See G.L. c. 131, § 40 (conservation commission may regulate activities in wetlands to, among other things, protect the public water supply).

### III. State Environmental Code

Finally, the Commonwealth claims that the defendants are violating the State Environmental Code, G.L. c. 21A, § 13, by dumping septage onto the Property.<sup>4</sup> General Laws c. 21A, § 13, authorizes the DEP to adopt regulations for matters affecting the environment and the well-being of the public including standards for the disposal of sewage. Pursuant to that authority, the DEP has adopted the Title 5 Regulations, 310 Code Mass. Regs. §§ 15.00 et seq., which, among other things, provide that septage must be discharged to a sanitary sewer or to a treatment works facility approved by DEP. See 310 Code Mass. Regs. § 15.504(2).

The Commonwealth has produced evidence to support a reasonable inference that the defendants are disposing septage on the Property. The defendants' website states that they offer portable toilet rentals and septic system pumping services. The defendants are storing portable toilets on the Property, see Exs. 1 & 2 from 8/18/2025 hearing, and a septage tank trailer and a septage pumping truck, both labeled Marchand Septic, have been at the Property, see Affidavit of Stephen Spencer, Ex. 18. Further, Spencer observed the defendants cleaning portable toilets at the

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<sup>4</sup> The Commonwealth also claims that the defendants are storing septage on the Property in violation of DEP regulations. See 310 Code Mass. Regs. § 32.30(2) (prohibiting storage of septage within 2,500-foot radius of existing groundwater public water supplies absent submission to DEP of hydrogeologic study showing no risk of groundwater contamination or storage of such material in leak-tight containers); 310 Code Mass. Regs. § 32.31(1), (2) (requiring Town or DEP approval for any long-term storage of septage).

Property and soil testing from Blackstone's adjacent property was positive for human-sourced fecal matter. Thus, the Commonwealth has shown a likelihood of success on the merits of its claim that the defendants are violating the State Environmental Code. A preliminary injunction allowing the Commonwealth access to the Property to ensure that the defendants are not dumping septage will protect the public health.

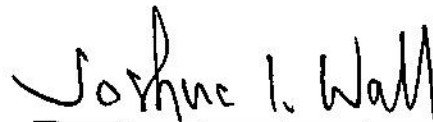
### **ORDER**

For the foregoing reasons, the Commonwealth's Motion for a Preliminary Injunction is **ALLOWED**. The defendants are hereby **ORDERED** to immediately cease and desist from the following at 25 Elm Street and Blackstone's abutting property: (1) storing, processing, transferring, and disposing of solid waste; and (2) all activities that remove, fill, dredge, or alter resource areas and buffer-zones subject to protection under G.L. c. 131, § 40. The defendants are also **ORDERED** to allow, once a month, with six hours prior notice, the DEP access to 25 Elm Street to ensure the defendants are complying with this order and to also ensure that the defendants are not dumping septage on the Property. The court **ORDERS** an expedited trial in this matter. As there is a reasonable likelihood that the Commonwealth will recover judgment, including interest and costs, in an amount equal to or greater than \$250,000,<sup>5</sup> and over and above any liability insurance shown by the defendants, the court **APPROVES** an attachment in the amount of \$250,000 as to all non-

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<sup>5</sup> See e.g., G.L. c. 111, § 150A ("Any person ... who violates this section, or any order issued pursuant thereto, or any rule or regulation promulgated hereunder (1) shall be subject to a fine of not more than twenty-five thousand dollars, or by imprisonment for not more than two years in a house of correction, or both, for each such violation; or (2) shall be subject to a civil penalty not to exceed twenty-five thousand dollars for each such violation. Each day each such violation occurs or continues shall be deemed a separate offense."); G.L. c. 131, § 40 ("Whoever violates any provision of this section, (a) shall be punished by a fine of not more than twenty-five thousand dollars or by imprisonment for not more than two years, or both such fine and imprisonment; or (b) shall be subject to a civil penalty not to exceed twenty-five thousand dollars for each violation.").

exempt real and personal property within the Commonwealth in the names of Defendants,  
Marchand LLC d/b/a Marchand Septic, Marchand Environmental, and Smart Rentals.

A handwritten signature in black ink, reading "Joshua I. Wall". The signature is written in a cursive style with a horizontal line underneath it.

Joshua I. Wall  
Justice of the Superior Court

September 22, 2025