

**COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

)	File No.: UAO-NE-04-4004
In the Matter of:)	FMF No.: 39545
)	
New Ventures Associates LLC)	
Crow Lane Landfill Closure)	ADMINISTRATIVE
ORDER)	
Newburyport, Massachusetts)	
)	

I. THE PARTIES

1. The Department of Environmental Protection (the “Department”) is a duly constituted agency of the Commonwealth of Massachusetts, established pursuant to M.G.L. c. 21A, §7, with its principle and Metropolitan Boston/Northeast Regional offices located at One Winter Street, Boston, Massachusetts 02108.
2. New Ventures Associates, LLC (“New Ventures”) is a Delaware corporation with a business address at 85-87 Boston Street, Everett, Massachusetts 02149. New Ventures is the current owner of the Crow Lane Landfill located on Crow Lane in Newburyport, Massachusetts (the “Facility”).

II. STATEMENT OF FACTS AND LAW

3. The Department is a duly constituted agency of the Commonwealth of Massachusetts, established pursuant to G.L. c.21A, §7. The Department is responsible for the implementation and enforcement of G.L. c.21H, G.L. c.111, §150A and §150A½, and the regulations promulgated thereunder at 310 CMR 16.00 and 310 CMR 19.000. The Department's authority to issue this Order is conferred by M.G.L. c. 111, §150A.
4. The Facility is an uncapped, unlined, and inactive landfill. New Ventures purchased the site on which the Facility is located from City Landfill Trust of Hampton Falls, New Hampshire in April of 2000.

5. On February 27, 2003, the Department and New Ventures entered into an Administrative Consent Order, ACO-NE-01-4001, (the “ACO”) for the assessment and closure of the Facility in accordance with 310 CMR 19.000, the Massachusetts Solid Waste Management Regulations.
6. Paragraph 13 of Section III of the ACO reads in part:

“New Ventures shall comply with the landfill assessment and closure design procedures set forth at 310 CMR 19.000, the procedures for Timely Actions and Fees set forth at 310 CMR 4.00, the Department’s *Landfill Technical Guidance Manual* (“Guidance Manual” revised May 1997), applicable provisions of the Guideline, any amendments and/or modifications to these documents, and shall perform landfill closure design and landfill closure in accordance with the following schedule....”
7. Paragraph 21 of Section III of the ACO reads:

“The actions required by this ACO are subject to approval by the Department and shall be performed in accordance with M.G.L. c. 111, §150A and M.G.L. c. 111, §150A1/2, and the regulations promulgated thereunder at 310 CMR 16.00 and 19.000, the Guidance Manual, Guideline and all other applicable federal, state and local laws, regulations and approvals.”
8. On March 18, 2003, the Department received an application from New Ventures, BWPSW11-Transmittal No. W036772, for authorization pursuant to 310 CMR 19.000 to initiate construction of a perimeter berm at the Facility (the “Berm Construction Design”).
9. On March 21, 2003, the Department received an application from New Ventures, BWPSW11-Transmittal No. W036927, for approval of the Conceptual Closure Plan for the placement of shaping and grading material at the Facility.
10. On April 22, 2003, the Department approved the Berm Construction Design pursuant to 310 CMR 19.000.
11. On May 8, 2003, the Department issued a Notice of Administrative Deficiency (NOAD) to New Ventures pursuant to 310 CMR 19.000 and 310 CMR 4.00 for the Conceptual Closure Plan.
12. On June 10, 2003, the Department received New Ventures’ response to the NOAD including proposed revisions to the Conceptual Closure Plan.
13. On October 21, 2003, the Department issued an approval to New Ventures for the Conceptual Closure Plan (the “Closure Plan Approval”) and as provided by 310 CMR 19.043(1) the Department included conditions to assure compliance with 310

CMR 19.000 and to protect the public health, safety and the environment. These included, but are not limited to, the following conditions.

a. Condition 2 that reads in part:

“2. In the event the relocation of waste and/or the grading & shaping of the Landfill causes a nuisance condition due to odors, New Ventures shall:

a. Take actions as appropriate to control and mitigate those odors. Such actions shall include, when necessary, cessation of operations until conditions improve and/or other actions that can be implemented to control the odors. These may include, but are not limited to, varying the C&D fines/soil mixture ratio, the placement of daily or intermediate cover materials, and/or the installation of an active gas collection and treatment system or any other action deemed necessary by the Department including, if directed in writing by the Department, the cessation of the receipt of C & D residuals and/or fines.”

b. Condition 5 that reads:

“5. In accordance with the Guidelines, the organic content of grading and shaping material placed at the site shall not exceed 35% by weight (as determined by a loss of ignition test). All materials with an organic content greater than 35% shall be mixed with other material either prior to or during placement to assure compliance with this requirement.”

c. Condition 6 that reads:

“6. Paragraph b under Gas Management on page 3 of the Plan, shall be deleted and replaced with the following:

“C & D fines shall be mixed with mineral aggregate (such as, soil or street sweepings) at a ratio of not less than one part mineral aggregate to each part C&D fines (1:1 vol./vol.), unless another ratio is approved by the Department. The generation of landfill gas at the site will be monitored weekly initially for H₂S. The Scope of Work for the Comprehensive Site Assessment required by paragraph 13 D. of the ACO will include a plan for monitoring the generation of landfill gas during the placement of shaping and grading material to determine whether conditions exist for the generation of H₂S gas (such as, anaerobic conditions, presence of H₂S) and to support any proposed change in the mixing ratio. This will include continued routine monitoring of the ambient air for

H₂S.””

d. Condition 7 that reads:

“7. Section 5 Construction Procedures of the Plan shall be modified to include the following:

- a. All grading and shaping materials shall be stockpiled within the Landfill footprint and shall be managed in a manner that minimizes the potential for erosion, including the placement of hay bales or other erosion control measures as necessary.
- b. All grading and shaping material shall be placed in lifts not exceeding eighteen (18) inches and be compacted by a minimum of three (3) passes of landfill compaction equipment (that is, a compactor) having a minimum weight of twenty (20) tons.
- c. All C&D and MRF residuals shall be covered with soil within seven (7) days of placement, unless another lift of C & D or MRF residuals or other grading and shaping material is placed within that time period.
- d. A minimum of a three (3) day stockpile of mineral aggregate or other approved alternative cover material (other than C & D residual and fines) shall be maintained on site or be readily available should site conditions warrant its use (such as, odors).
- e. All exposed solid waste shall be covered at the end of the working day.”

14. On July 20, 2004, Department personnel inspected the Facility. The inspection included, but was not limited to: observing the construction activities, walking the site, and reviewing the Facility records, including the daily logs and Engineer’s inspection reports. As a result Department personnel observed the following violations:

- a. Black leachate exhibiting a slight septage odor at the following locations: the northeast section adjacent to the haul road, the southwest/west corner discharging to the wetland, and at a point along the west/northwest berm on the interior edge of the berm.
- b. Exposed C&D residuals and fines were observed on the western slope and on the upper surface of the landfill.
- c. C&D residuals and fines were not being placed with soil at the required ratio of 1:1 by volume (1:1 vol./vol.).
- d. C&D residuals and fines were being mixed with material excavated at the

Facility that included some solid waste.

- e. Approximately 300 cubic yards of “urban fill” with a trace of brick and concrete (<5%) and a pile of “loam” that had been stripped from the Facility stockpiled adjacent to the haul road.
 - f. The Engineer’s logs documented the occurrence of the practices described in Paragraphs 14 c. and d., above.
 - g. The ratio of C&D residuals and fines to soil brought to the Facility from June 1, 2004 through July 23, 2004, as reported on the daily logs, supports the conclusion that C&D residuals and fines were not being mixed with soil at the required ratio of 1:1 vol./vol..
15. On July 23, 2004, the Department, pursuant to 310 CMR 19.040, issued a modification of the Closure Plan Approval to New Ventures. The modification required New Ventures to establish and operate a permanent weather station at the Facility to monitor wind speed and velocity to aid in the assessment of whether odors, if detected in the surrounding area, originate from the Facility. In addition, the modification required New Ventures collect representative daily samples of the as placed grading and shaping material to document that the total organic content, by a loss of ignition test, does not exceed 35% by weight.
16. On September 2, 2004, Department personnel inspected the Facility and the violations were consistent with those observed by Department personnel on July 20, 2004.
17. On September 20, 2004, Department personnel inspected the Facility. The conditions were consistent with those observed on July 20, 2004 and September 2, 2004 with the exception that the “septage” odor was detected at the entrance to the Facility on Crow Lane and no off-site soil was stockpiled at the Facility. The source of the odor appeared to be the black leachate emanating from the northeast section of the landfill. In addition, Department personnel determined that New Ventures was conducting bi-weekly ambient air monitoring of the Facility for landfill gas, including H₂S rather than weekly monitoring as provided by the Conceptual Closure Plan and the Scope of Work for the Comprehensive Site Assessment and the Department’s approvals thereof. In addition, New Ventures was not utilizing an analytical instrument with a detection limit equivalent to that of a Jerome Meter for hydrogen sulfide (H₂S),
18. On September 30, 2004, Department personnel visited the Facility and adjoining areas of Crow Lane and Low Street at dusk to investigate whether odors from the Facility were impacting off-site residential areas. A slight odor was detected at the Facility in the area of the black leachate release along the haul road and at the top of the haul road. No odors were detected on Crow Lane or Low Street.

19. On October 1, 2004, Department personnel visited the Facility and adjoining areas of Crow Lane and Low Street in the early morning (dawn) to investigate whether odors from the Facility were impacting off-site residential areas. A slight odor was detected at the Facility in the area of the black leachate release along the haul road. No odors were detected on Crow Lane or Low Street.
20. The Department has found that New Ventures has violated the following requirements:

M.G.L. c.111, §150A and §150A¹/₂

- a. 310 CMR 19.015 - Compliance, which reads in part:

“No person shall construct, modify, operate or maintain a facility except in compliance with a site assignment, permit or plan approved by the board of health or the Department, as applicable, and any authorizations issued by the Department and all conditions included in a permit, approval or authorization for said facility.”

- b. 310 CMR 19.043(5) - Conditions for Permits and Authorizations, which reads in part:

“(a) Duty to Comply. The permittee shall comply at all times with the terms and conditions of the permit or approval, 310 CMR 19.000, M.G.L. c. 111, § 150A and all other applicable state and federal statutes and regulations.

.....

(c) Duty to Halt or Reduce Activity. The permittee shall halt or reduce activity whenever necessary to maintain compliance with the permit conditions, or to prevent an actual or potential threat to the public health, safety or the environment.

...

(d) Duty to Mitigate. The permittee shall remedy and shall act to prevent all potential and actual adverse impacts to persons or the environment resulting from non-compliance with terms or conditions of the permit or approval. The permittee shall repair at his own expense all damages caused by such non-compliance.

...”

- c. 310 CMR 19.130(16) - Vector, Dust and Odor Control, which reads in part:

“(a) The operator shall prevent vectors, dust, odors and other nuisance

conditions from developing at the landfill and any other areas related to the general facility operations....”

21. Subsequent to each inspection described in Paragraphs 14, 16 and 17, above, Department personnel contacted representatives of New Ventures to discuss the Department’s observations and measures that New Ventures should institute to address the issues identified by the Department.
22. On October 6, 2004, New Ventures’ attorney transmitted to the Department, in an electronic format, a draft letter, dated October 6, 2004, describing the actions New Ventures proposed to take to address the issues raised by the Department.

Issuance of this Order by the Department does not limit the Department’s rights to initiate other enforcement with regard to the Facility or any other matter, including noncompliance with the requirements cited in this Order.

III. DISPOSITION

For the reasons set forth above, the Department hereby issues the following Order.

23. New Ventures shall, upon receipt of this Order, immediately cease the receipt and placement of C&D Residuals or Fines at the Facility, except in accordance with the Conceptual Closure Plan as approved by the Department and the provisions of Paragraphs 24 and 25 of this Part.
24. Prior to recommencing the receipt and placement of C&D residuals and fines at the Facility, New Ventures shall establish and maintain on-site a minimum soil stockpile of 5000 cubic yards (the “Cover Stockpile”). The loam stockpile described in Paragraph 14 above and present at the Facility on October 1, 2004 shall not be considered part of the Cover Stockpile for purposes of this Order (that is, shall not be included in the 5000 cubic yards). The Cover Stockpile shall be used for the purpose of complying with Conditions 6 and 7 of the Closure Plan Approval including, the covering of exposed waste, erosion control, control of odors and mixing with C&D residuals and fines at the required pre-compaction ratio of 1 to 1 by volume (vol./vol.). For purposes of determining compliance with the provisions of this Paragraph the Department shall use an across the scale conversion factor for the soil of 1.4 tons per cubic yard (that is, the uncompacted density).
25. New Ventures shall not mine or otherwise remove material from the existing landfill to be used as soil for other purposes including, but not limited to, cover material or mixing with C&D residuals and fines. New Ventures may continue to excavate and consolidate waste associated with the construction of the berm foundation. Such waste may be placed in the landfill and shall be covered at the end of each working day by a suitable cover in accordance with 310 CMR 19.130(15)(a) and (b). Grading and shaping material may be used for this purpose

provided the grading and shaping material is placed in accordance with the Conceptual Closure Plan as approved by the Department, including but not limited to, the 1:1 vol./vol. mix of C&D residuals and fines with COMM-97-001 soil or clean burrow.

26. New Ventures shall have the current Engineer of Record for the project, GZA GeoEnvironmental, Inc. of Norwood, Massachusetts, conduct an inspection of the Facility within seven (7) days of the date of receipt of this Order. The Engineer of Record shall inspect the Facility for compliance with the requirements of the Conceptual Closure Plan, the Scope of Work for the Comprehensive Site Assessment and the Department's approvals thereof and the provisions of this Order. This inspection shall include, without limitation, inspection of the storm water controls, erosion controls, overall site conditions, and any releases of leachate or runoff and sampling of the ambient air for landfill gas including hydrogen sulfide, using an analytical method with a detection limit of not greater than 3 parts per billion for hydrogen sulfide. New Ventures shall have the Engineer of Record prepare a report (Inspection Report) of the findings of his/her inspection that includes without limitation:
- a. A summary of the results of the inspection,
 - b. Preliminary recommendations for short term and long term measures to address issues identified by the Engineer of Record,
 - c. An odor control plan, and
 - d. A leachate control plan.

The Report shall be certified by both New Ventures and the Engineer of Record in accordance with 310 CMR 19.011 and shall be submitted to the Department within fourteen (14) days of the date of receipt of this Order by New Ventures.

27. New Ventures shall prevent and mitigate the creation of odor nuisance conditions from the activities at the Facility as required by 310 CMR 19.130(16) including implementing measures as required by 310 CMR 19.043(c) and (d).
28. New Ventures shall continue to maintain the Facility in accordance with the requirements of the Department's approvals, the Conceptual Closure Plan and 310 CMR 19.000.
29. New Ventures shall conduct air monitoring at the Facility in accordance with 310 CMR 19.000, the Conceptual Closure Plan, the Scope of Work for the Comprehensive Site Assessment, and all Department approvals.
30. New Ventures shall submit to the Department progress reports that shall include without limitation updates on the activities undertaken to comply with the

provisions of this Order. The first progress report shall be submitted within fourteen (14) days of the effective date of this Order. A progress report shall then be submitted every thirty (30) days until otherwise directed by the Department. In addition, pursuant to 310 CMR 19.043(5)(e) New Ventures shall provide the following information with the first progress report:

- a. A summary of the daily amounts of material received at the Facility since commencement of the construction and closure activities at the Facility. The summary shall include the daily tonnage and cubic yards for each type of material brought to the Facility, including but not limited to, C & D fines and residuals, COMM-97-001 soil, dredge material, crushed stone, and other materials used for grading and shaping, or other activities at the Facility, such as construction of the berm or storm water controls. In addition, the daily summary shall include the number of trucks that tipped material at the Facility each day. The monthly totals for each material shall also be provided.
 - b. A description (type and source) and estimate of the quantity of soil that is currently stockpiled at the Facility for mixing with the C&D residuals and fines and use as cover.
 - c. Copies of all the daily activity logs for the Facility and of GZA GeoEnvironmental, Inc.'s Inspection Reports since commencement of activities at the Facility by New Ventures.
 - d. A summary of the analytical results for the systematic, random, and daily sampling of grading and shaping material performed at the Facility.
 - e. A summary of the ambient air data collected at the Facility, including: the sampling dates, a description of the analytical method(s) used and the instrument's detection limits.
31. This Order shall be binding on New Ventures and on its officers, employees, agents, successors, licensees and assignees. New Ventures shall not violate this Order and shall not allow or suffer its officers, employees, agents, successors, consultants, assignees, licensees or contractors to violate this Order. Violation of this Order by any of the foregoing shall constitute a violation of this Order by New Ventures. New Ventures shall provide a copy of this Order to each successor, licensee or assignee concurrent with establishing any succession, license or assignment.

IV. SUBMISSIONS

32. All submissions made to the Department by New Ventures shall be certified in accordance with the applicable provisions of 310 CMR 19.000, including but not limited to the requirements of sections 310 CMR 19.011, 19.031(11), and 19.043. All submissions required under this Section must be addressed to:

John A Carrigan
Solid Waste Section Chief
Massachusetts Department of Environmental Protection
Metropolitan/Boston Northeast Regional Office
One Winter Street - 9th Floor
Boston, Massachusetts 02108

V. RESERVATION OF RIGHTS AND AUTHORITY

33. Nothing in this Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting (i) any legal or equitable right of the Department to issue any additional Order or to seek any other relief, including penalties, with respect to the subject matter covered by this Order, or (ii) any legal or equitable right of the Department to pursue any other claim, action, suit, cause of action, or demand which the Department may have with respect to the subject matter covered by this Order, including, without limitation, any action to enforce this Order in an administrative or judicial proceeding.

34. New Ventures is advised that if it fails to comply with this Order:

- a. An administrative penalty may be assessed for every day from the effective date that New Ventures is in non-compliance with the requirements described in this Order;
- b. Notwithstanding the above, the Department reserves the right to exercise the full extent of its legal authority in order to obtain full compliance with all applicable requirements including but not limited to criminal prosecution, civil action including court imposed civil penalties or administrative penalties imposed by the Department.
- c. M.G.L. c. 111, §150A and §150A1/2, provides for civil penalties of up to twenty five-thousand dollars (\$25,000) per day for each day a violation of this Order occurs;

VI. COMPLIANCE WITH OTHER LAWS AND REGULATIONS

35. This Order shall not be construed as, or operate as, relieving New Ventures or any other person of the necessity of complying with all applicable federal, state and local laws and regulations.

V. HEARING RIGHTS

36. You are hereby notified of your right to an adjudicatory hearing under the

Massachusetts Administrative Procedures Act, G.L. Chapter 30A, Section 10, regarding this Order. In accordance with the Department's Rules for Conduct of Adjudicatory Proceedings, 310 CMR 1.00, and 310 CMR 19.081(5), you shall be deemed to have waived your right to an adjudicatory hearing unless within twenty-one (21) days of the date of service of the order the Department receives a Notice of Claim for Adjudicatory Hearing. A Notice of Claim for Adjudicatory Hearing must state clearly and concisely the facts which are grounds for the proceedings and the relief sought; and must include the appropriate filing fee and Fee Transmittal Form.

A Notice of Claim for Adjudicatory Hearing must be addressed to:

Docket Clerk
Office of Administrative Appeals
Department of Environmental Protection
One Winter Street
Boston, Massachusetts 02108

A copy of said Notice of Claim must be sent to:

Edward P. Kunce
Acting Regional Director
Department of Environmental Protection
Northeast Regional Office
One Winter Street - 5th Floor
Boston, Massachusetts 02108

FILING FEE: the hearing request must be accompanied by a valid check payable to the Commonwealth of Massachusetts in the amount of \$100.00. The check for the filing fee must be mailed to:

Commonwealth of Massachusetts
Department of Environmental Protection
P.O. Box 4062
Boston, Massachusetts 02211

- (1) The hearing request will be dismissed if the filing fee is not paid, unless the appellant is exempt or granted a waiver as described below.
- (2) **EXCEPTIONS:** The filing fee is not required if the appellant is a city or town (or municipal agency), county, or district of the Commonwealth of Massachusetts, or a municipal housing authority.
- (3) **WAIVER:** the Department may waive the

adjudicatory hearing filing fee for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file, together with the hearing request as provided above, an affidavit setting forth the facts believed to support the claim of undue financial hardship.

VIII. AUTHORITY

37. The Department represents that the Commissioner of the Department has authorized the Regional Director of the Metropolitan Boston/Northeast Region, Edward P. Kunce, to issue this Order.

So Ordered,
Department of Environmental Protection,

This final document copy is being provided to you electronically by the Department of Environmental Protection. A signed copy of this document is on file at the DEP office listed on the letterhead.

By: _____
2004
Edward P. Kunce, Acting Regional Director
Northeast Regional Office
1 Winter Street - 5th Floor
Boston, Massachusetts 02108

Date: October 19,

unilateral order