



CITY OF NEWBURYPORT

BOARD OF HEALTH

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TO: Board of Health Members

FROM: John W. Morris, Director Public Health

DATE: January 26, 2006

SUBJECT: *NEW VENTURES SITE ASSIGNMENT CONDITIONS*

WHEREAS, New Ventures, LLC is the owner and operator of a landfill located on Crow Lane in the City of Newburyport (the "Crow Lane Facility"); and

WHEREAS, the City Health Department and Board of Health have received numerous complaints of odors emanating from the Crow Lane Facility; and

WHEREAS, the Board of Health is empowered pursuant to the provisions of G.L. c 111, §143 to determine a trade or employment to be a noisome trade based upon whether that trade or employment may result in a nuisance or be harmful to the inhabitants, injurious to their estates, dangerous to the public health, or may be attended by noisome and injurious odors; and

WHEREAS, the Board of Health conducted public hearings on December 21, 2005 and January 4, 2006 to determine whether the operation of the Crow Lane Facility by New Ventures, LLC constitutes a noisome trade; and

WHEREAS, the Board of Health heard testimony from numerous residents as to the physical impacts and impacts upon enjoyment of property caused to them by the substantial odors emanating from the Crow Lane Facility; and

WHEREAS, the Board of Health accepted into evidence sworn affidavits from 12 residents, and letters from three additional residents, attesting to the frequency with which the Landfill produced noxious odors, the strength of the odors, and the effect the odors have had on their health and lifestyles; and

WHEREAS, the Board of Health accepted approximately 28 exhibits into evidence from the Health Department and 3 exhibits from New Ventures, LLC; and

WHEREAS, the Board of Health heard testimony from its Health Director as to the extent of complaints received by the Health Department and as to the Health Director's opinion that the impacts from the operation of the Crow Lane Facility constitute a noisome trade by virtue of the odors experienced directly by the Health Director; and

WHEREAS, the Board of Health heard testimony from a Licensed Site Professional ("LSP"), employed by the City to conduct sampling and testing at the Crow Lane Facility, regarding the extent of the odors and the practices undertaken by New Ventures, LLC in operating the Crow Lane Facility; and

WHEREAS, the Board of Health heard testimony from a public health scientist employed by New Ventures, LLC that the hydrogen sulfide levels exceed the gas' "odor threshold," thereby acknowledging the presence of an odor in the vicinity of the Crow Lane Facility.

NOW, THEREFORE the Board of Health makes the following findings regarding the operation of the Crow Lane Facility by New Ventures, LLC:

1. The evidence presented by residents through testimony and sworn affidavits indicates that the odors emanating from the Crow Lane Facility are "foul," "ranging from a rotten egg smell to a raw sewage odor," "a horrible stench," and "worse than a sewer." The residents testified that the odors are not only prevalent outdoors, but also infiltrate their garages, vehicles, basements, and even the interior of their homes. Residents testified that the odors have prevented them from opening their windows, spending time outdoors, and having visitors to their homes. One resident testified that his family sometimes leaves home to escape the odors. Numerous residents testified that the odors cause them adverse health effects, including nausea, runny noses, irritated eyes, scratchy throats, headaches and dizziness. One resident testified that his 7-year-old daughter threw up because of the smell while sledding in their backyard. Many residents complained that the odors have interfered with their sleep.
2. Residents further testified that they have experienced these odors on a consistent basis for over a year, with the odors occurring almost daily during the fall and winter of 2005. The residents testified that the odors "can last hours sometimes an entire day into the evening and even overnight into the next morning."
3. The testimony presented by the residents and the Health Director was credible and made clear that the operation of the Crow Lane Facility may result in a nuisance or be harmful to the inhabitants, injurious to their estates, dangerous to the public health, or may be attended by noisome and injurious odors,
4. The testimony presented by the public health scientist employed by New Ventures, LLC did not counteract that presented by other witnesses at the hearings but instead supported the assertions that odor is prevalent at and within the vicinity of the Crow Lane Facility at nuisance levels.
5. The testimony of the LSP as well as an engineer employed by New Ventures, LLC made clear that the operation of the Crow Lane Facility by New Ventures, LLC involved the contracting with outside entities for the receipt and disposition of soils and construction and demolition debris and the use of employees to receive, spread, and shape those materials, thus constituting a trade or employment.

6. Based upon the testimony of witnesses and the documentary evidence presented, the operation of the Crow Lane Facility by New Ventures, LLC is determined to be a noisome trade subject to regulation by site assignment in accordance with the provisions of G.L. c. 111, §143.

The following are conditions imposed upon the operation of the Crow Lane Facility. New Ventures, LLC shall comply with the following conditions of site assignment at all times while operating the Crow Lane Facility:

- 1. Delivery of construction and demolition (C & D) residuals and fines shall not be permitted at the Crow Lane Facility until such time as adequate and effective odor controls are in place and efficiently maintained, as determined by the Health Director. New Ventures, LLC shall demonstrate to the satisfaction of the Health Department that all materials containing or generating H₂S can be removed from the C & D material before C & D residuals can be delivered to the Crow Lane Facility and used in grading and shaping activities.**
- 2. New Ventures shall provide a moveable air monitoring station for use by the Health Department. The station will contain a Jerome meter for monitoring H₂S at the perimeter of the landfill at locations determined by the Health Department. New Ventures shall move the air monitoring station and locate it in areas determined by the Health Department upon notification that a different location is required. New Ventures, LLC shall also provide adequate training to Health Department agents and adequate calibration of the meter as required by manufacturer's recommendations. Any and all costs associated with the moveable air monitoring station shall be paid by New Ventures. This condition must be complied with prior to the start of operations.**
- 3. New Ventures shall provide a plan, stamped by a registered professional engineer, showing the installation of additional gas extraction wells, or otherwise for the expansion of the existing gas extraction system to abate H₂S odors. The measures shown on the plan shall be implemented by New Ventures, LLC. Compliance with this condition is required prior to the start of operations at the Crow Lane Facility.**
- 4. New Ventures, LLC shall install an enclosed flare system with H₂S pre-treatment, as required by the DEP. The plan must include remote monitoring of the flare system to verify that the system is functioning and is at proper operating temperatures for the destruction of landfill gases.**
- 5. New Ventures, LLC shall remove all heavily contaminated leachate from the site and dispose of said leachate at a legal facility. Only clean water such as detention basin water or other sources of water may be used for the application of posi-shell at the Crow Lane Facility. Water which is found to be causing a nuisance or a potential nuisance may be deemed not usable as determined by the Health Department.**

- 6. Truck traffic backing up on Crow Lane resulting in trucks idling in excess of 5 minutes is prohibited. Trucks shall be required to stop running their engines in this event. New Ventures, LLC shall be responsible for enforcement of this provision. Failure to comply with this provision may result in appropriate enforcement action taken by the Health Department. New Ventures, LLC must provide notification to all truck drivers and maintain copies of signed notification by truck drivers.**
- 7. New Ventures, LLC shall forthwith complete all applications, reports, assessments, sampling data, and take corrective action, as required by the Department of Environmental Protection (the "DEP").**
- 8. All trucks delivering any materials to the Crow Lane Facility shall be properly weighed and a permanent record shall be maintained of the trucks, their date and time of arrival, and their weights. These records shall be made available for inspection upon request by the Health Department and weekly reports with copies of the permanent records shall be provided to the Health Department.**
- 9. New Ventures, LLC shall maintain a complaint system at all times which must include a 24 hour telephone complaint line, accurate complaint logging, and complaint response reports. Further, New Ventures, LLC shall take corrective action and provide corrective action reports in response to such complaints as required by the Health Department. The Health Department reserves its right under applicable statutes, rules, and regulations to take further enforcement action in response to complaints received in relation to operation of the Crow Lane Facility.**
- 10. New Ventures, LLC shall be required to pay a penalty of up to \$1000.00 for violations of these conditions and any nuisance conditions as determined by the Health Department. Each day that New Ventures, LLC is in violation or each day that a nuisance condition exists shall constitute a separate and continuing violation subject to fine.**
- 11. New Ventures shall be required to pay funds necessary to implement this site assignment in accordance with the funding plan identified as attachment A with the document.**
- 12. The Health Department at times may determine the need for consultation with an LSP or other technical consultants necessary to address conditions at the landfill, other than those conditions or requirements under the exclusive jurisdiction of the DEP. Any expenses incurred for this consultation shall be paid by New Ventures, LLC. The scope of services and fee for such consultants shall be subject to reasonable negotiation between the Health Director and New Ventures, LLC within 15 days of the request for such consultation by the Health Department. Failure to conclude such negotiations in good faith may result in enforcement action being taken by the Health Department, up to and including an order for the cessation of operations.**

- 13. New Ventures, LLC shall comply with all other applicable laws, rules, and regulations while operating the Crow Lane Facility. The Health Department may require New Ventures, LLC to take corrective actions or cease operations as necessary to abate a public health nuisance or to effect compliance with these conditions. At any time a nuisance is determined to exist by the Health Department, or if any conditions are present which in the opinion of the Health Department cause a nuisance or are injurious to the public health, New Ventures, LLC shall cease all operations until said nuisance is abated as determined by the Health Department.**
- 14. The Board of Health reserves the right to take further enforcement action regarding the operation of the Crow Lane Facility and any violation of this site assignment pursuant to its authority as provided by the provisions of G.L. c. 111, §§ 122 and 123, 143 and any other applicable statute and Newburyport Board of Health Rules and Regulations.**
- 15. New Ventures, LLC may seek a hearing before the Board of health with regard to any action taken or notice or fine issued pursuant to these conditions in writing within seven days of issuance.**
- 16. If any paragraph, sentence, phrase or word of this site assignment shall be declared invalid for any reason whatsoever, such determination of invalidity shall not affect any other portion of the site assignment which shall remain in full force and effect and to this end the provisions of this site assignment are hereby declared severable. Notwithstanding the provisions that may be in conflict with the Massachusetts General Laws, and the revised by laws of the City of Newburyport, this site assignment will be binding upon all parties concerned.**

