

## Response to Mayor Moak's July 2, 2009 Memo regarding the Landfill

Submitted by: Donna Holaday 7/10/09

I have outlined my remaining questions and concerns regarding the Mayor's responses to the City Council's Ad hoc committee request. Please feel free to follow up with me if you have additional questions. I anticipate our further discussion and dialog on Monday 7/20.

1. *What are the rules of operation regarding delivery of materials to the landfill? Do trucks carry bills of lading? Who certifies the quality of materials? If materials do not meet our requirements, who is responsible for rejecting loads that may exacerbate our odor problems?*

Mayor's response: There has been no change to the rules of operation for delivery of materials. The truck drivers carry weigh slips from the facility in Everett, which confirms their origin. The material coming from Everett is approved by DEP and is evaluated and treated at that site. If materials reaching Newburyport do not meet our requirements, the Health Director is responsible for requiring those materials to be placed to the side and further treated or removed.

Comments and Remaining Questions: My understanding of the rules of operation for delivery of materials are delineated in the Crow Lane Settlement Agreement dated 4/28/09 and the 2005 Administrative Consent Order and Penalty providing additional details of C&D materials to be accepted beyond the Beneficial Use Determination (BUD) stated in the host agreement and referenced to DEP COMM #97-001 for acceptance of contaminated solids at landfills. Appendix G holds New Ventures and Wood Waste accountable under penalty of law for the certification of materials to be shipped following the gypsum protocol removal as provided to the city's Board of Health in January 2006. Violations would result in a new cease and desist order. My understanding is that there has been compliance in this area.

Additionally, in an email from the Mayor and forwarded by Ron Klodenski on May 17<sup>th</sup> provides further details on site operations:

"The monitors at the landfill (Dave, Brian, and Jack when necessary) are there to inspect activities related to the Noisome Trade Agreement.

They are concerned about what is in the trucks, leachate collection, the flare and odor. They inspect each truck to make certain there are not strong odors and or pieces of gypsum visible. The material coming to this landfill has been previously sorted for gypsum and the DEP has certified that it meets their protocol. Our monitors make certain that the C&D is mixed one to one with the soil on site which has been previously inspected. If they viewed exceptional gypsum they would immediately request it be removed. If it was not removed an incident report would be filed with the DEP. We have the right under our Noisome Trade Agreement to eliminate actions that would create a health nuisance to our community. It is the determination of our Health Director to make that assertion...in the past we have asked for corrective action if this has not worked we have been successful in closing the operation of the landfill. We maintain those rights.

Our monitors concentrate their inspections on the landfill property; their responsibility is not for our HCA. Our monitors do assist with tracking HCA requirements such as number of C&D trucks, (this remains at 35 per day) maintenance of debris in road and time of operation. They do not work on weekends, but Ward Five Councillor and I inspect the landfill on weekends to make certain that no truck traffic is present. NV is entitled to work on Saturday, but cannot receive trucks. Trucks are not allowed to be onsite at the landfill prior to 8am. I usually visit the landfill between 7:00- 7:45am, I have not seen trucks

lined up on Crow Lane...I would expect that the time it takes to do paper work and unload that in the early morning there may be a back up of 2-3 trucks waiting to enter landfill. If this does occur it should be at the west end of Crow Lane. I will notify NV of this concern.

I am not sure of what other rules you are interested in recording. The Noisome Trade Agreement by design does not spell out highly detailed protocol because it is a fluid document that allows us flexibility in how we direct actions that we feel are not in compliance. That is the way the document was designed and it gives us the needed strength along with flexibility to make this a sustainable agreement.

If there are areas where there develops difficulty in NV not understanding our protocol, we will address these issues with more specific criteria. “

*Question 2. What is the maximum number of trucks that may enter the landfill each day? How many trucks have been delivering materials each day since the landfill reopened to truck traffic? During what hours of the day do they deliver material? Does New Ventures currently comply with the terms of the HCA?*

Mayor's response: The Host Community Agreement (HCA) puts a limit of 35 trucks bringing materials into the landfill per day. We understand this to mean 35 trucks of C&D materials, with the sand and topsoil cover materials being a separate category. Because the initiation of landfill closure began a month later than expected last spring, we have allowed more than 35 trucks into the landfill per day in order to allow the deliveries to catch up to the originally proposed schedule of completion this fall. Many of the additional trucks per day over 35 have carried sand and topsoil cover materials. Materials are delivered from 8AM to dusk, as provided under the HCA. Never do we allow more trucks per day than our Health Department monitors are capable of adequately inspecting. In our opinion, New Ventures has been effectively in compliance with the terms of the HCA.

Comments and Remaining Questions: The HCA section 3.5 clearly states “NVLCC shall not deliver more than 35 truckloads to the landfill in any 24-hour period.” Other legal documents appear silent on this term. I can only assume that the Mayor's reference to allowing an increase in trucks is considered under a *Force Majeure* event which includes a delay at no fault of New Ventures and appears to allow for modifications with approval from DEP. The City Council was clearly opposed to an increase in the number of trucks that was requested by New Ventures in a request to modify the HCA. This area warrants further clarification as the Mayor's 5/19 memo indicates compliance with the 35 truckload number which contradicts the above response.

*Question 3. What is the amount and the composition of material being deposited in the landfill? What is the percentage of construction and demolition debris? How much of that material contains gypsum? How are the amounts measured without a scale?*

Mayor's response: Materials brought to the landfill meet the DEP protocol for gypsum removal. There is no weight requirement for the landfill material, only a volume requirement. Volume is measured by the truck capacity and the landfill capacity described within the Conceptual Plan. Under the Corrective Action Design (CAD) approved by DEP, approximately 550,000 cubic yards is allowed into the landfill.

Comments and Remaining Questions: I understand the protocol I discussed above in question number one is being followed but I would still like an accounting of the additional C&D material that has been deposited in the landfill since it has reopened.

Question 4. *How are materials tested, where are they tested and by whom?*

Mayor's response: The materials are covered by the Beneficial Use Determination (BUD) issued by DEP and are approved for landfill grading and shaping. These materials have been further evaluated and treated according to DEP approved methods at the Everett facility prior to being sent to Newburyport.

Comments and Remaining Questions: This is also my understanding and I do not have further questions here.

Question 5. *What is the status of berm borings that have been taken? What do those borings tell us about the composition and physical stability of the berms? In a related manner, when will New Ventures move the berm off city property?*

Mayor's response: To date, this berm analysis is still occurring through the DEP's engineering consultant, Shaw Environmental. We have not yet received any results from the DEP. The City has a written agreement that berm material will be removed from City property prior to final closure of the landfill.

Comments and Remaining Questions: I understand a meeting is being set with the City Council to receive the results of the boring tests by Shaw Engineering as DEP is currently reviewing the findings. We should expect information on this critical test shortly.

Question 6. *How many days since 5/1/09 has the gas flare system operated? On what days has it not operated? Has NV or the city surveyed that gas collection system to confirm that the "as built" gas collection piping conforms to the engineered design?*

Mayor's response: The gas flare system has been operational 24 hours per day, 7 days per week since 5/1/09, with only one 4-hour shut down for maintenance purposes. Surveying the gas collection system is the responsibility of DEP.

Comments and Remaining Questions: The Crow Lane Settlement Agreement dated 4/28/09 provides extensive details in Appendix B on Landfill Gas Control Protocol and Appendix I on Landfill Inspection and Record Keeping Protocol. This includes a requirement for weekly inspections of the gas flare LFG pre-treatment system as well as weekly review of the daily inspection reports. Monitoring reports are posted at <http://sites.google.com/site/cllmonitoring/> as you know which includes the inspection reports. I believe these reports indicate the appropriate inspections have been followed.

Question 7. *In a related matter, please supply a copy of the Material Safety Data Sheet (MSDS) of odor control/masking agents being applied to the landfill, and the amount and frequency of it application.*

Mayor's response: See attachment sent by e-mail.

Comments and Remaining Questions: ChemStation 8164 information was provided including the MSDS sheet and I am satisfied with the depth of the information provided.

Question 8. *What storm water management measures are in place to prevent contaminated runoff into nearby surface waters, or gulying and entrenchment of the landfill while the membrane and cap are being installed.*

Mayor's response: The temporary stormwater erosion and sedimentation control measures approved by DEP are in place, and in well-maintained condition. With the amount of rain we have had this spring, they have worked quite effectively.

Comments and Remaining Questions: The Crow Lane Settlement Agreement, Appendix F delineates New Ventures requirements for Interim Storm Water Management and in review of all current information on this area, I believe the Mayor's response is an accurate assessment.

Question 9. *What is the status of pending, active, or suspended administrative action by the city over New Ventures?*

Mayor's response: This information will be requested from Kopelman & Paige.

Comments and Remaining Questions: I would like a date to when we may expect this information

Question 10. *What is the status of pending, active or suspended litigation between the city and New Ventures? Please forward to the City Council, via the City Clerk, a complete list of all litigation to date involving the Crow Lane Landfill.*

Mayor's response: This information will be requested from Kopelman & Paige.

Comments and Remaining Questions: I would like a date to when we may expect this information

Question 11. *What is the status of administrative actions and/or litigation by the Massachusetts Attorney General or Department of Environmental Protection regarding the landfill?*

Mayor's response: This question must be answered by the DEP and Attorney General. We are awaiting an answer from them.

Comments and Remaining Questions: I would like a date to when we may expect this information.

Question 12. *What is the current timetable for completing landfill closure? And what responsibilities will the city have and will New Ventures have post-closure?*

Mayor's response: My understanding of what will happen at the landfill during the next two months is the following: C&D materials will continue to be delivered until the valley is filled. Trucks with sand and topsoil will arrive and material will be brought to the top of the plateau and distributed over the existing FML and stockpiled for the remainder of the FML. Once a report on the berm is received, New Ventures will begin the completion of the berm and the final access

road. The goal is to have a majority of the seeding done by early October. My goal is to have it completely seeded by October. Because of the 21E agreement, we have no responsibility for post-closure activities.

Comments and Remaining Questions: My concern at this juncture is the apparent lack of a pre-developed and approved plan to address the haul road and break through into previously filled areas releasing high levels of H<sub>2</sub>S. It is also clear that new odor has developed as it is not reading on the Jerome meters. I would like to see additional testing of air quality to determine what the smell that has been described as 'sewage', 'burnt material' and other. The bottom line is several residents are exhibiting severe health symptoms and we need to know what we are dealing with and how to mitigate these effects. I am encouraged that DEP has been responsive and at the site including responding to a call recently at 11 PM. Finally, residents need advance notification of upcoming procedures and if there is potential for additional blows and what plans are in place to address these.