



# CAPE COD COMMISSION

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DATE: August 25, 1998 MOD-91032

TO: Joseph J. Lombardi, Jr.  
President  
ReSource Recovery of Cape Cod, Inc.  
295 Service Road  
East Sandwich, MA 02537

RE: Modification of a Condition Attached to a Settlement Agreement

APPLICANT: Joseph J. Lombardi, Jr.

PROJECT: ReSource Recovery of Cape Cod, Inc./Sandwich Stump Dump

PLAN: Plan: 40326-A  
Land Court Certificate of Title Numbers 91225 and 111651

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## DECISION OF THE CAPE COD COMMISSION

### SUMMARY

The Cape Cod Commission (Commission) hereby approves the application of Mr. Joseph J. Lombardi, Jr., President of ReSource Recovery of Cape Cod, Inc. for a modification to conditions attached to a Settlement Agreement under Section 7 of the Administrative Regulations (latest revision dated May 21, 1997).

The application is hereby approved as a Minor Modification #2 under Section 7 of the Administrative Regulations (as revised). This decision is rendered pursuant to a vote of the Commission's Regulatory Committee on August 24, 1998.

### ORIGINAL PROJECT DESCRIPTION and MODIFICATION REQUEST

Resource Recovery of Cape Cod, Inc. is the new owner of the Sandwich Stump Dump located at 295 Service Road in Sandwich, MA.

The facility was the subject of a Settlement Agreement with attached Conditions between the Cape Cod Commission and the then-facility owner. This Agreement was entered into in 1995 and is binding on the current owner. The current owner is in the process of achieving conformance with the Conditions of the Settlement Agreement.

The applicant for this modification request sought a change to condition #38 of the conditions attached to the Settlement Agreement based on the fact that primarily electric-powered equipment and not diesel-powered equipment was going to be used to process wastes accepted at the facility.

### PROCEDURAL HISTORY

On August 10, 1998, staff received a letter from Attorney Michael Last of Mintz, Levin on behalf of the applicant, stating that the Settlement Agreement could be treated as a DRI for purposes of modifications. On August 14 and 17, 1998, staff received information from an acoustical

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consultant acting on behalf of the applicant discussing noise from diesel and electric motors. On August 18, 1998, the staff received a letter from the facility owner discussing the modification request. On August 19, 1998 the Regulatory Committee was provided with background information on the project by staff. August 21, staff received a letter from the Sandwich Town Administrator's office stating that the Settlement Agreement could be treated as a DRI for purposes of modifications and also in support of the modification request. On August 24, 1998 staff provided the Regulatory Committee with a Memorandum concerning the proposed modification.

#### **COMMENTS/DISCUSSION AT THE REGULATORY COMMITTEE MEETING**

No comments from the public were received at the August 24, 1998 Regulatory Committee meeting on this project. Staff noted that letters had been received from Attorney Michael Last of Mintz, Levin on behalf of the applicant and from the Town of Sandwich jointly agreeing to treat the Settlement Agreement as a DRI for purposes of a modification. Staff also noted a letter had been received from Mr. Lombardi concerning the modification request. Staff recommended that the applicant's request to modify condition #38 be considered a Modification #2 under Section 7 of the Administrative Regulations.

On August 24, 1998, the Commission's Regulatory Committee considered the applicant's request to modify condition #38 of the Settlement Agreement with respect to enclosing of electric motors. At this meeting, the Regulatory Committee voted unanimously to consider the request as a Minor Modification #2 under Section 7 of the Administrative Regulations (as revised).

#### **MATERIALS SUBMITTED FOR THE RECORD**

##### **A. Materials submitted by the Applicant:**

Letter, from Attorney Last, concerning modification procedure	8/10/98
Fax from acoustical consultant	8/14/98
Letter from acoustical consultant	8/17/98
Letter, from Mr. Lombardi, concerning modification	8/18/98

##### **B. Materials submitted by Cape Cod Commission:**

Memorandum, to Regulatory Committee	8/19/98
Memorandum, to Regulatory Committee	8/24/98

##### **C. Materials submitted by the Town of Sandwich**

Letter, from Town Administrator's office	8/21/98
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Note: No other written materials or verbal comments were submitted on this modification request by the State, Town officials or the Public.

The Application and notice of the public hearing relative thereto, the Commission's staff reports, exhibits, minutes of all hearings and all submissions received in the course of the proceedings, including materials submitted on file TR-91032 and MOD-91032 are incorporated into the record by reference.

#### **JURISDICTION**

The proposed change to condition #38 of the Settlement Agreement between ReSource Recovery of Cape Cod, Inc./Sandwich Stump Dump can be treated as a DRI for purposes of modifications according to both the applicant and the Town of Sandwich. Section 7 of the Administrative Regulations (as revised) describe the modification procedure.

#### **FINDINGS**

The Commission's Regulatory Committee has considered the application of Mr. Joseph J.

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Lombardi, Jr. for a modification to condition 38 attached to the Settlement Agreement subject to Section 7 of the Administrative Regulations (as revised) for the sole purpose of a change related to noise abatement from motors.

The Regulatory Committee found that the applicant:

- 1. Will utilize primarily electric-powered equipment to process wastes accepted at the facility instead of primarily diesel-powered equipment as originally contemplated in the project review.
- 2. The proposed change to condition #38 to forgo enclosing of electric motors is supported by the Sandwich Town officials as evidenced by the Town Administrator's 8/21/98 letter.

On August 24, 1998, the Commission's Regulatory Committee voted unanimously to consider the applicant's request to modify condition #38 as a Minor Modification #2 under Section 7 of the Administrative Regulations (as revised).

**CONDITIONS**

In accordance with the vote of the Regulatory Committee on August 24, 1998, condition #38 attached to the Settlement Agreement is modified as follows (**bold**):

38. The Sandwich Stump Dump shall enclose the motors of any stationary machinery used to process wastes accepted at the facility so as to reduce noise caused by operation of this machinery. This shall be done prior to use of any stationary machinery. **Electric motors of stationary machinery used to process wastes accepted at the facility do not need to be enclosed.** The Sandwich Stump Dump shall provide the Sandwich Board of Health with confirmation that these measures have been completed prior to use of the machinery. The Sandwich Stump Dump shall also enclose the open transoms in the rear-facing wall of the transfer station facility prior to issuance of a Certificate of Compliance.

Robert Deane  
Robert Deane, Chair  
Regulatory Committee

Date August 27, 1998

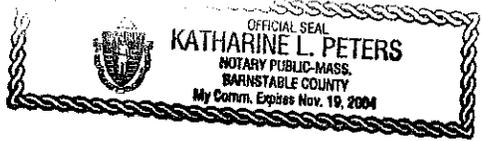
**COMMONWEALTH OF MASSACHUSETTS**

Barnstable, ss.

Subscribed and sworn to before me this 27<sup>th</sup> day of Aug 1998.

Katharine L. Peters  
NAME, Notary

My Commission expires:



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