



CAPE COD COMMISSION

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DATE: July 12, 1999 MOD-91032 (#2a - Clarification)

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

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 a condition attached to a Settlement Agreement under Section 7 of the Administrative Regulations.

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 March 1, 1999.

This Decision is a clarification of the Regulatory Committee's vote as the result of a letter received by the Cape Cod Commission on June 25, 1999 from the applicant's representative, Attorney Last of Mintz, Levin.

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 applicant for this modification request sought a change to condition #33 of the conditions attached to the Settlement Agreement to install a wooden fence on top of an existing berm and a change to the approved site plans to reflect the installation of an electric-powered conveyor to transport wood chips from the grinder to the outside clean wood chip storage pile. The request was based on the fact that the wooden fence and conveyor belt will improve sound attenuation at the facility.

PROCEDURAL HISTORY

On February 3, 1999, staff received a letter from Attorney Michael Last of Mintz, Levin on behalf of the applicant discussing the reasons for the proposed modification with an attached modified site plan showing the location of the proposed conveyor belt and sound attenuation fence. On February 24, 1999 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 March 1, 1999 Regulatory Committee meeting on this project. Staff noted comments from David Mason, Town of Sandwich Health Agent indicated the Town supported the proposed sound attenuation measures. Staff also noted that Mr. Mason wanted the wooden fence to be of a height suitable to provide sound attenuation. Staff noted that as part of maintaining compliance with the existing Settlement Agreement conditions, any screening vegetation or property line marker bounds disturbed during installation of the fence would need to be replaced. Staff recommended that the applicant's request to modify condition #33 be considered a Modification #2 under Section 7 of the Administrative Regulations.

On March 1, 1999, the Commission's Regulatory Committee considered the applicant's request to modify condition #33 of the Settlement Agreement with respect to installation and maintenance of a wooden sound attenuation fence. The Regulatory Committee also supported the applicant's request to construct an electric-powered conveyor to transport wood chips from the grinder (inside a building) to the outside clean wood chip storage pile. 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 and site map from Attorney Last, concerning modification	2/3/99
Clarification letter from Attorney Last	6/25/99

B. Materials submitted by Cape Cod Commission:

Memorandum, to Regulatory Committee	2/24/99
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C. Materials submitted by the Town of Sandwich

No written materials were submitted on this modification request by the State, Town officials or the Public.

The applicant's letter requesting the modification and the notice of the Regulatory Committee meeting relative thereto, the Commission's staff memorandum, exhibits, minutes of all Committee meetings 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 #33 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) describes the modification procedure.

FINDINGS

The Commission's Regulatory Committee has considered the application of Mr. Joseph J. Lombardi, Jr. for a modification to condition #33 attached to the Settlement Agreement and to the approved site plans subject to Section 7 of the Administrative Regulations (as revised) for the sole purpose of two changes related to noise abatement/sound attenuation. The changes would allow the installation, repair and maintenance of a wooden fence within one specific on-site open space area and the installation of an electric-powered conveyor belt to transport wood chips from the on-site grinder (located inside a building) to a clean wood chip storage pile outside.

The Regulatory Committee found the proposed change to condition #33 to allow construction of a wooden

sound attenuation fence and the installation of electric conveyor belt to transport wood chips were supported by the Sandwich Town officials.

For clarification, the installation of the conveyor belt is not specifically referenced in the Conditions of the Settlement Agreement, but it is a modification to the site plans. At the same time, because the conveyor is electrically-powered, it is in conformance with the requirements of Condition #38 (as modified in a Decision dated August 25, 1998/Mod-91032).

No other modifications to the Settlement Agreement or its conditions were required or authorized by the vote of the Regulatory Committee.

On March 1, 1999, the Commission's Regulatory Committee voted unanimously to consider the applicant's request to modify condition #33 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 March 1, 1999, condition #33 attached to the Settlement Agreement is modified as follows (**bold**):

33. Upon completion of all slope stabilization measures, no development, as development is defined by the Cape Cod Commission Act, shall occur within the open space/buffer areas as delineated on the plan entitled "Landscape/Open Space Plan" dated July 6, 1995 and prepared by Eagle Surveying and Engineering, Inc. or within open space areas delineated on the revised site plan required in Condition #31 above. Prohibited development includes, but is not limited to, structures, access or haul roads, parking areas, woodwaste burial areas and waste/container stockpiling areas. All existing naturally-vegetated areas shall remain undisturbed, with the exception that additional plantings and fencing shall be provided as required by this agreement. **The applicant is allowed to install, construct, repair and maintain a sound attenuation fence as reflected on the revised site plan dated February 2, 1999, received by the Commission on February 3, 1999 showing a wooden fence to be constructed on top of the sound attenuation berm within a portion the open space area/buffer along the East property line.** A fence shall be erected at the rear of the parcel to prevent access to the 260 foot buffer. In addition, the innermost edge of the buffers on the East and West property boundary shall be delineated on the site with permanent markers such as concrete bounds spaced no more than 500 feet apart.

Robert H. Deane
Robert Deane, Chair
Regulatory Committee

Date July 13, 1999

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

Subscribed and sworn to before me this 12th day of July 1999.

Katharine L. Peters
NAME, Notary

My Commission expires:

