



## CAPE COD COMMISSION

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DATE: March 4, 2004

TO: Brent Goins, General Manager  
Town of Bourne  
Department of Integrated Solid Waste Management  
24 Perry Avenue  
Buzzards Bay, MA 02532

FROM: Cape Cod Commission

RE: Modification of Development of Regional Impact Decision ENF #97031  
dated February 17, 2000  
Cape Cod Commission Act, Sections 12 and 13

APPLICANT: Town of Bourne, Department of Integrated Solid Waste Management  
24 Perry Avenue  
Bourne, MA 02532

PROJECT #: MOD #03021 Major Modification to DRI Decision ENF #97031 dated  
February 17, 2000 and modified August 2001

PROJECT: Bourne Integrated Solid Waste Management Facility

BOOK/PAGE: Book 1351 Page 456 & 457

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### DECISION OF THE CAPE COD COMMISSION

#### SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions the application of the Bourne Integrated Solid Waste Management Facility as a Major Modification to the approved Development of Regional Impact decision for the Bourne Integrated Solid Waste Management Facility (ISWMF) pursuant to Sections 12 and 13 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, and Section 9(n) of the DRI Enabling Regulations, Barnstable County Ordinance 90-12 for addition of municipal solid waste to the permitted waste stream at the ISWMF. This decision modifies the Commission's February 17, 2000 DRI decision and is rendered pursuant to a 16-1 vote of the Commission on March 4, 2004.

## **PROJECT DESCRIPTION**

The project before the Commission is a modification to the February 17, 2000 Development of Regional Impact (DRI) decision which would allow the ISWMF (located off MacArthur Boulevard in Bourne) to accept municipal solid waste (MSW). The ISWMF, which is the subject of this approval, includes the development of two lined cells (Phase 3 and Phase 4), the reclamation of Phase 1D, and the Materials Recovery Facility (MRF). The development of the full Phase 1 reclamation plan, (Phase 5) and Phase 6, the bio-solids proposal are not part of this modification or the prior February 17, 2000 DRI approval. The February 17, 2000 DRI decision was also the subject of a subsequent August 21, 2001 minor modification type 2 according to Section 7 of the Commission's *Administrative Regulations*. The Department of Environmental Protection (DEP) has permitted the ISWMF to begin accepting MSW in accordance with the Authorization to Operate (ATO) for Phase 3, Stage 3 dated December 22, 2003.

The Town had operated a landfill on the site since the late 1960's. Active landfilling of MSW at the site ended in 1997 when the Town began shipping MSW to the SEMASS waste-to-energy plant in Rochester, MA. In 1994, the Town received a permit from the DEP to expand the existing landfill by constructing a new, lined cell immediately adjacent to and partially on top of part of the older landfill. The proposed new cell was to provide disposal capacity for Bourne-only MSW and construction and demolition (C&D) debris. However, after reviewing the proposed new cell with the DEP, the Town opted to construct a more comprehensive, regional lined landfill in phases for just C&D and other difficult-to-manage wastes. The Town also decided to incorporate a processing center for the C&D in the proposal.

## **PROCEDURAL HISTORY**

The Town of Bourne submitted a Notice of Project Change (NPC) to the MEPA Unit in March 2003, describing a shift from the management of C&D to MSW at the ISWMF. The Commission received a revised NPC dated June 23, 2003 for the ISWMF. The revised NPC involved expanding the list of acceptable materials at the site to include MSW. On July 28, staff recommended that an Environmental Impact Report (EIR) was not warranted for the proposed change. A Certificate from the Secretary of Environmental Affairs dated August 7, 2003 on the NPC did not require the applicant to prepare an EIR.

The Town of Bourne sought a minor modification #2 to the February 17, 2000 Commission decision to allow the ISWMF to accept MSW for disposal at its double-composite liner landfill. On November 17, 2003 the Regulatory Committee determined that the proposed modification to accept MSW at the ISWMF was a major modification.

The Town of Bourne filed an application with the Commission dated November 28, 2003 seeking a modification to the February 2000 DRI decision. A duly noticed public hearing was held at the Bourne High School library on January 20, 2004. Subcommittee meetings were held on February 5, February 17 and March 1, 2004. At the February 5, 2004 meeting the subcommittee recommended approval of the modification with conditions. A final public hearing was held before the full Cape Cod Commission on March 4, 2004. At the close of this hearing, the Commission voted to approve the major modification, with conditions.

**Materials submitted for the record**

<u>From the applicant:</u>	<u>Date Received</u>
Letter, to MEPA, Notice of Project Change w/attachments	3/25/03
Letter, to MEPA, request to extend NPC review period	5/8/03
Letter, to MEPA, request to withdraw NPC	5/23/03
Letter, to MEPA, Board of Health, concerning BUD	5/28/03
Letter, to DEP, Cambridge Environmental Inc., Risk Assessment	7/16/04
Letter, from American REF-FUEL, w/attachments, combustor ash	7/16/03
Memo from ISWMF staff regarding traffic impacts	7/24/03
Fax, from Applied Coastal, on Brian Howes' letter	7/25/03
Letter, to MEPA, NPC w/attachments	7/25/03
Nutter, McClennan and Fish, Request for Major Modification	11/24/03
2002 ISWMF Business Plan	11/26/02
Letter, to DEP, Cambridge Environmental Inc., H2S gas	12/15/03
Letter, concerning condition WR3 of 2/17/00 DRI decision	1/7/04
Letter, additional project information	1/9/04
Printout, power-point slides for 1/20/04 hearing	1/20/04
Letter, additional project information	2/5/04

<u>From Cape Cod Commission:</u>	<u>Date Received</u>
Staff Report to Regulatory Committee	11/17/03
Facility Use Form	12/10/03
Letter, to B. Goins, on water resources issues per condition WR3	12/30/03
Staff Report	1/14/04
Memo, to Subcommittee, submissions for the record	1/14/04
Notice, Public Hearing	1/20/04
Sign-in Sheet, Public hearing	1/20/04
Notice, Public Meeting	2/5/04

<u>From state/local officials:</u>	<u>Date Received</u>
MEPA, Certificate on NPC	8/11/03
Rep. Gifford, letter, in support	11/13/03
Rep. Gifford, letter, in support	11/17/03
Mashpee DPW, letter, in support	12/19/03
Hanover DPW, letter, in support	1/2/04
Brewster DPW, letter, in support	1/6/04
Rep. Perry, letter, in support	1/7/04
Duxbury DPW, letter, in support	1/7/04
Rep. Patrick, letter, in support	1/12/04
Hanover DPW, letter, in support	1/13/04
Brewster, Board of Selectmen and DPW, letter, in support	1/14/04
Sandwich, Town Administrator and DPW, letter, in support	1/16/04
Provincetown DPW, letter, in support	1/16/04
Senator Murray, letter, in support	1/20/04
Rep. Gifford, letter, in support	1/20/04

Falmouth DPW, letter, in support	1/20/04
Falmouth Town Administrator, letter, in support	1/20/04

From the public:

Date Received

UMass, Dartmouth, letter, comments on Back River Study	7/25/03
Richard & Judith Conron, letter, in opposition	11/14/03
Wayne Covell, E-mail, in opposition	11/17/03
Gregory Wirsen, letter, concern about project	11/17/03
Tim Johnson, letter, concern about project	11/22/03
Richard & Judith Conron, letter, in opposition	11/19/03
Newspaper article, <i>Upper Cape Codder</i>	11/27/03
Newspaper article, <i>Cape Cod Times</i>	12/4/03
MassHauling/Recycling, letter, in support	12/29/03
New England Recycling, letter, in support	12/29/03
ABC Disposal, Inc., letter, in support	1/2/04
Bortolotti Construction Inc., letter, in support	1/16/04
Lawrence Lynch Corp., letter, in support	1/16/04
South Shore Recycling Cooperative, copy of hearing testimony in support of the proposed modification	1/20/04
Richard & Judith Conron, letter, in opposition	1/20/04
Wayne Covell, copy of hearing testimony, in opposition	1/22/04
Richard & Judith Conron, letter, in opposition	1/22/04
Association for the Preservation of Cape Cod, letter, careful review	1/22/04
Newspaper article, <i>Cape Cod Times</i>	1/23/04
Newspaper article, <i>Cape Cod Times</i>	1/30/04

DEP Permits or other Documents Connected to the Project:

Date Received

Letter, to incinerator operators, MCA and TCLP	7/11/97
Letter, to solid waste facilities, MCA and solid waste	7/11/97
Notice of Admin. Completeness, Permit to Reuse Phase 1D Soils	3/26/03
Notice, Draft Permit Approval to Reuse Phase 1D Soils	5/12/03
Permit, Final Approval to Reuse Phase 1D Soils	6/17/03
Permit, Authorization to Construct, Phase 3/Stage 3 Lined Cell	7/3/03
Approval, Phase 2 & Phase 3 Final Closure & Gas System	7/21/03
Notice of Admin. Completeness, Removal of Creosote Soils from Phase 1D (w/ attachments)	9/12/03
Permit Modification, Phase 3/Stage 3 Lined Cell	10/15/03
Permit, Final Approval, Phase 3/Stage 3 Lined Cell	12/22/03

The application and notices of public hearings relative thereto, the Commission staff's notes, exhibits and correspondence, the transcript and minutes of meetings and hearings and all written submissions received in the course of the Commission's proceedings on project MOD #03021 are incorporated into the record by reference.

**TESTIMONY**

Note: see minutes in project file for complete public hearing proceedings.

#### January 20, 2004 Public Hearing

The applicant provided an overview of the proposed modification. Commission staff provided an overview of issues associated with solid and hazardous waste management, traffic, groundwater resources, and economic development.

Dave Ellis of the DEP spoke in favor of the proposed modification, stating that there were other facilities available for C&D processing and that the tonnage needs for C&D disposal in the region were already taken care of. He further stated that the ISWMF is a regional facility with innovative technologies, and was trying to gauge and meet regional needs.

Joseph Carrara, Barnstable Assembly of Delegates representative from Bourne spoke in support of the proposed modification. He stated that the ISWMF is a regional asset and will offer the Town the opportunity to look at innovative waste management technologies.

Mark Tirell, Chairman of the Bourne Board of Selectman spoke in favor of the facility, as he wants it to continue to be a regional asset. He stated that it is a site assigned, state of the art facility, and the Town needs options to deal with changes in the marketplace since the facility was permitted in 2000. Also, he stated that the facility would continue to be a regional benefit, and that the Commission should allow MSW to be a part of the permitted waste stream.

William Owen, Falmouth DPW spoke in favor of the project, stating that he had sent a letter of support to the Commission staff. The Town of Falmouth already utilizes the ISWMF for disposal of limited amounts of C&D and DTM. He urged the Town of Bourne to look at using the ISWMF for regional composting, and felt that the ISWMF could serve as an outlet for Cape MSW when contracts with SEMASS expire in 2015.

Mr. Steven McNally, Chairman of the Bourne Board of Health stated that the Board of Health has sent a letter of support to the Commission. He stated that the modification is a good alternative for both the region and the Town of Bourne.

Ms. Monica Mullen from Senator Therese Murrar's district office spoke in favor of the ISWMF's modification request. She stated that the Senator's office has sent a letter of support to the Commission, and the Senator and other members of the local delegation had visited the ISWMF. She felt the project was vital for the future of the Cape and showed tremendous foresight, and hoped that the details of the modification could be worked out now to protect the future.

Greg Taylor, Mashpee DPW Director stated that he fully supported the Town of Bourne's modification. He stated that he has worked with the Town of Bourne for many years, and the Town of Mashpee was very pleased with the way the Facility operated. He further stated that allowing the ISWMF to accept MSW will provide competition and give Mashpee greater flexibility in the future regarding MSW disposal.

Clarie Sullivan of the South Shore Recycling Collaborative provided a letter in support of the modification. She stated that it would be a hardship for the Towns in her area of the South Shore

to lose the C&D disposal capacity that the ISWMF offers. However, the addition of MSW to the Facility's permitted waste stream will be of financial value to her communities. She was optimistic and hoped that the ISWMF would play a larger role regionally, using innovation technologies for waste management.

Richard Conron from Bourne stated that the subcommittee should put its decision on hold regarding the modification, as the Town had yet to put together a specific plan approved by the Board of Selectmen utilizing the MSW waste stream at the ISWMF. He stated that the plans put together years ago for C&D are no longer viable, and that approving the modification without a specific business plan would be inconsistent with the regulatory process of the Commission.

Peter Fisher had questions about the other Cape town's MSW contracts. He stated that 13 of the 15 Cape Towns have the potential to re-negotiate their contracts in 2006. He also stated that SEMASS is 100,000 tons beyond capacity at this time and that they can no longer incinerate all of the waste that comes to them. Allowing the ISWMF to manage MSW would allow the Town to relieve SEMASS of this burden.

Wayne Covell stated the DEP approved of the ISWMF accepting MSW because the Facility was going out of business with regard to C&D and the state saw the opportunity to put everyone else's garbage in Bourne's backyard. He hoped that the Commission would permit the ISWMF to accept only Barnstable County MSW in order that there be better accountability on what is going into the Facility. He asked that the Commission err on the side of caution.

Mr. Sean Conlon stated that he was echoing Mr. Conron's concerns regarding the proposed modification.

Mr. Jack Elwood stated that the operations at the ISWMF are very professional and well managed. The facility has a terrific record on recycling and has one of the best overall recycling records (44 percent in 2002). He reiterated his support for the Town's modification request.

Mr. Lexes Coates stated that the majority of people in Town supported the ISWMF due to the advantages and assets of the Facility to the Town. He stated that this meeting was not about trash, but really was about human beings. Everyone generates trash, and it must be dealt with safely. He stated that this controversy over the ISWMF will continue and will not be settled tonight.

Mr. George Seaver stated that the markets for dealing with MSW are unstable, and that the Town is now dependent on the monies generated by the Facility. The Town has come up with three different businesses in the past and each time the business has ended due to the instability of the marketplace. He felt that due to market instability the Town should wean itself off of MSW.

Mr. Jim Mullvey stated that there was a discrepancy in the traffic report, and was skeptical about what the applicant said would be coming over the bridges. He also stated that MSW is garbage, and wanted to know what bio-solids and fines are. He also asked that if the Town got into composting, would that mean constructing a separate structure to separate the material prior to composting.

Mr. Hamilton White spoke in support of the proposed modification and agreed with Lexus Coates' comments.

### **JURISDICTION**

In accordance with Section 7 (d)(iii) of the Cape Cod Commission *Administrative Regulations*, the Commission's Regulatory Committee determined on November 17, 2003 that the proposed changes to the previously approved project constituted a Major Modification.

### **FINDINGS**

The Commission has considered the application of the Bourne Department of Integrated Solid Waste Management for the addition of MSW to the permitted waste stream at the ISWMF. Based on consideration of such application and upon the information presented at the public hearing(s) and submitted for the record, the Commission makes the following findings pursuant to Sections 12 and 13 of the Act:

#### **General**

*General findings G1 and G2 of the original DRI decision (ENF #97031, February 17, 2000 and modified in August 2000 remain in effect. The following General findings G3-G5 are added to the original decision (ENF #97031 dated February 17, 2000 and modified in August 2000):*

G3. This project modification was reviewed under the 2002 Regional Policy Plan and the amendment to the RPP that became effective on September 10, 2003.

G4. As noted in finding G2, a portion of the project, as defined in this decision, has a site assignment as a landfill from the Bourne Board of Health, which dates to June, 1972. An adjacent 25-acre town-owned parcel has as of the date of this modification decision not yet been site assigned.

G5. The Town of Bourne does not have a certified Local Comprehensive Plan (LCP). As such, consistency with the LCP is not required. The development is also consistent with the Town of Bourne development bylaws.

#### **Solid Waste**

*The following Solid Waste findings SW1-SW12 replace findings SW/HWM1-SW/HWM11 of the original decision (ENF #97031, February 17, 2000 and modified in August 2001):*

SW1. The Town of Bourne is approved to operate a temporary, non-MSW waste processing facility within the limits of the Phase 3 lined landfill areas, Stage 1, 2 and 3 per the Department of Environmental Protection's (DEP) Authorization to Operate (ATO) permit dated December 22, 2003. Per the ATO, the ISWMF's permit to continue to process mixed C&D debris at the facility and in the landfill will expire on July 1, 2004. The ATO also authorizes the ISWMF to accept MSW in the Phase 3 Stage 3 lined landfill cell.

SW2. The ISWMF will continue to meet a regional need for the disposal of difficult-to-manage (DTM) and other non-hazardous wastes. It will provide Cape communities the opportunity to deliver recyclable materials and to dispose of DTM wastes, bulky wastes, soils, dredge spoils

and other non-hazardous special wastes at a facility located on Cape Cod. As such, this facility will remain a regional asset to Cape Cod.

SW3. The ISWMF is permitted to receive a maximum of 825 tons per day (tpd) of waste and recyclable materials. On average, a maximum of 600 tpd (700 tpd during the peak season) will be disposed and 225 tpd will be composted or processed for recycling. If 700 tpd are disposed, the amount accepted for composting or processing for recycling cannot exceed 125 tpd (based on the ATO dated December 22, 2003).

SW4. The proposed project is in compliance with Goal 4.2.1 of the 2002 RPP. The landfill portion will provide a facility, using the latest in landfill technology, for the disposal of DTM and other non-hazardous wastes. Only wastes that cannot be composted, recycled or otherwise diverted will be landfilled.

SW5. There are currently three permitted facilities located on Cape Cod and a number of facilities located off-Cape that are permitted to accept unprocessed C&D.

SW6. The projected life expectancy of the landfill is anticipated to be approximately 23 years (“Final Report on Evaluation of Future Business Plan for Bourne Landfill” completed by CDM, dated September 30, 2003).

SW7. The applicant believes that the Primary Wasteshed for MSW will be Cape Cod. The Secondary Wasteshed will include all of Plymouth County and portions of Bristol County.

SW8. Fourteen Cape towns (excluding Bourne) have long-term contracts with the SEMASS Waste to Energy (WTE) facility in Rochester for disposal of municipally collected MSW. These contracts will generally expire in 2015.

SW9. Permitting the ISWMF to accept MSW will add a competitor to the MSW disposal market in the form of an additional disposal site for MSW on Cape Cod.

SW10. The ISWMF will provide regional benefits to Cape Cod, including:

1. Lower MSW disposal costs for commercial businesses on Cape Cod;
2. Disposal capacity for Municipal Combustor Ash (MCA) from incineration of MSW from Cape Cod and southeastern Massachusetts municipalities; and
3. MSW disposal options for the Town of Bourne and a segment of Cape communities not under contract with the SEMASS waste to energy facility.

SW11. The ISWMF may provide additional regional benefits to Cape Cod, including:

1. Future processing of C&D materials generated on Cape Cod and southeastern Massachusetts; and,
2. In-vessel MSW composting with biosolids generated on Cape Cod and southeastern Massachusetts, or as a residuals disposal alternative for a composting facility sited elsewhere on Cape Cod

SW12. The landfill is not permitted to accept any asbestos containing material (ACM) except non-friable vinyl asbestos tile. If the town wishes to pursue disposal of other ACM, a Special Waste Determination Permit will need to be obtained from DEP (MEPA Certificate, November 29, 1999).

#### Hazardous Waste Management

*The following Hazardous Waste Management Findings are added to the original decision (ENF #97031, February 17 2000 and modified in August 2001):*

HWM1. MPS 4.3.1.1 requires development and redevelopment to make efforts to minimize hazardous material use and/or waste generation through various methods, including employee education. MPS 4.3.1.4 requires preparation of an emergency response plan. The modification application and other documentation submitted by the applicant indicates that the ISWMF continues to have procedures to educate and train their staff to prevent prohibited wastes from entering the facility. The facility also provides town residents with various programs to promote proper management of hazardous waste including used oil, batteries, waste paint and used fluorescent bulbs. Bourne also participates in regional efforts to increase collection of household hazardous wastes.

HWM2. MPS 4.3.1.2 requires compliance with the Massachusetts Hazardous Waste Regulations, 310 CMR 30.000. One of the wastes which the ISWMF is currently permitted to accept is municipal combustor ash (MCA). The modification application states that the ISWMF “may add an amount of...MCA to its waste stream...”. According to current regulatory requirements, MCA ash is not regulated as hazardous waste by Massachusetts *if it can pass a specific testing regimen*. In terms of other hazardous waste issues, according to a January 12, 2004 letter from the applicant, the facility is registered as a Small Quantity Generator of hazardous waste. According to DEP staff, the ISWMF is registered as a Large Quantity Generator of waste oil, a Small Quantity Generator of hazardous waste. This is called having “dual status” according to the Hazardous Waste regulations. The DEP staff also indicated the facility was in good standing in terms of other compliance issues.

#### Economic Development

*The following Economic Development Findings are added to the original decision (ENF #97031, February 17, 2000 and modified in August 2001):*

ED1. While solid waste management facilities are not one of the industries specifically listed as compatible and to be promoted under the 2002 RPP, facilities like the Bourne ISWMF are not precluded.

ED2. Facilities such as the ISWMF are an essential element of the regional economy, providing a benefit on which other businesses and municipalities within the region may depend.

ED3. Given current MSW disposal contracts between 14 Cape towns and SEMASS, the regional economic development benefit of the Bourne ISWMF may be limited until after 2015. However, as stated in finding SW10, there are currently several regional benefits afforded by the proposed modification.

ED4. Given that waste management continues to be a regional concern and the addition of MSW to the mix of acceptable waste at the Bourne facility may accrue benefits to the region, the requested modification is in compliance with Goal 3.1 of the 2002 RPP.

ED5. The location of the Bourne ISWMF has not changed; it continues to be appropriately outside major community business or residential districts and therefore complies with Goal 3.2 of the 2002 RPP.

ED6. This modification will not alter the level or nature of employment at the Bourne ISWMF. Rather, the modification request will protect existing employment levels and benefits by enabling the facility to continue functioning at current levels.

ED7. Information supplied by the applicant supports the contention that current operating levels are threatened by changes in state regulations and market pricing. In particular, tighter regulation on the management and disposal of unprocessed C&D waste has eroded the town's competitive advantage in this area, which has represented over 75 percent of the facility's overall revenue.

ED8. The addition of MSW to the menu of eligible waste to be managed at the ISWMF may help secure existing levels of employment and therefore complies with Goal 3.3 of the 2002 RPP.

#### Transportation

*Transportation findings T1 through T5 of the original decision (ENF #97031, February 17, 2000 and modified in August 2001) remain in effect. The following transportation findings have been added:*

T6. The applicant stated that the maximum daily tonnage of the ISWMF will remain at 825 tons per day. The new vehicle traffic will be limited by the tonnage allowed at the ISWMF. The applicant has stated that the average vehicle carrying MSW entering the ISWMF will have a higher payload than the average vehicle carrying construction and demolition (C&D) waste, resulting in fewer vehicle trips. The applicant concluded that the change in waste streams would result in a reduction of thirty-seven (37) daily vehicle trips. Maintaining the peak hour to daily traffic ratio as outlined in the February 17, 2000 Commission DRI decision would result in a reduction of five (5) peak hour trips. Due to the net decrease in regional traffic as a result of the change in waste stream, the transportation mitigation requirements of the 2002 RPP are met.

T7. At the January 20, 2004 public hearing for the modification, concerns were raised relative to new vehicle trip distribution as a result of the incorporation of MSW at the ISWMF. The applicant submitted revised trip distribution estimates indicating that a larger percentage of truck traffic would cross the Bourne Bridge, however, due to the overall reduction in truck trips, the net result would be a reduction in traffic over the Bourne Bridge.

#### Natural Resources

*The Natural Resources findings of the original DRI decision (ENF#97031, February 17, 2000 and modified in August 2001) remain in effect.*

### Community Character

*The Community Character findings of the original DRI decision (ENF #97031, February 17, 2000 and modified in August 2001) remain in effect.*

### Water Resources

*The following Water Resource findings WR1 and WR3 of the original DRI decision (ENF #97031 dated February 17, 2000 and modified in August 2001) have been modified. Findings WR2, WR4, WR5, WR6, WR7, WR8, WR9, WR10, WR11, WR12 and WR13 remain unchanged. Findings WR14 and WR15 have been added.*

WR1. The proposed project is not located in a Wellhead Protection Area, but, according to MPS 2.1.1.2.C, is located in a Marine Water Recharge Area to the Back River which is recognized as an Area of Critical Environmental Concern. A critical nitrogen load will be established for the Back River estuary by the Massachusetts Estuaries Project (MEP).

WR3. ODRP 2.1.1.10 encourages improvement in water quality. The facility is a state-of-the-art landfill with double liners with leak detection interval and leachate collection system. The completed project will be capped and collected leachate will be managed at a facility that is licensed to handle landfill leachate.

The February 17, 2000 DRI decision required a Hydrogeologic Investigation (HI) of areas off-site and hydraulically downgradient of the landfill to evaluate the extent and nature of downgradient impact of the Phase 1 unlined landfill on water quality. Results of the investigation are documented in a April 11, 2003 report completed by Mahoney and Douglas, Inc. and entitled Hydrogeologic Investigation for Bourne Integrated Solid Waste Management Facility. Commission staff commented on the results of the HI in letters to the Town dated June 4, 2003 and December 30, 2003.

To demonstrate improved water quality afforded by this Phase One landfill closure, the applicant has agreed to conduct additional groundwater monitoring at three (3) off-site, downgradient monitoring wells installed during the Hydrogeologic Investigation, and to make the results available to the Commission. Groundwater quality parameters will be measured and water samples will be collected during October 2004, 2005, 2006, 2007 and 2008. Following joint review of the monitoring results by ISWMF and Commission staff, a joint determination by ISWMF and Commission staff will be made regarding the potential value of further monitoring.

Samples collected from monitoring wells MW-21D, MW-22D, and MW-25D will be analyzed by a state-qualified laboratory for the following analytes:

- Total nitrogen
  - TKN
  - Nitrate-N
  - Ammonia-N
- VOCs – USEPA Method 8260
- Alkalinity
- Iron
- Manganese

During sample collection, groundwater quality will be measured for the following parameters:

- Dissolved oxygen
- Specific Conductivity
- PH
- Temperature

The applicant has further agreed to provide to the Commission the aforementioned groundwater-quality measurements and lab analyses results for on-site monitoring wells MW-1s, MW-12D and MW-14D for the five-year period as specified above, in addition to monitoring results required by MADEP for other on-site monitoring wells.

WR14. As noted in finding G3, incorporation of a 25-acre parcel adjacent to the 78-acre landfill site was approved as a minor modification type 2 by the Commission in August, 2001. According to MPS 2.1.1.2.F, that parcel is identified as a Potential Public Water Supply Area (PPWSA), however, parcels may be removed from consideration for a PPWSA provided that supporting documentation is submitted to the Commission. Additionally, due to the presence and proximity of the landfill, the parcel is not well suited for a public water supply. The Bourne Water District provided a letter indicating that the District does not intend to develop water supplies within the District's boundaries (all of the Town of Bourne, excluding the Massachusetts Military Reservation). Therefore, MPS 2.1.1.2.F does not apply to this project.

WR15. As of the date of this decision, the final Certificate of Compliance required by the Commission's February 17, 2000 DRI decision (modified in August, 2001) has not yet been issued. Issuance of the final Certificate is pending completion of the nitrogen loading assessment of the Back River watershed as required by the February, 2000 DRI decision.

Per finding WR11 in the February 17, 2000 decision, the Town of Bourne has allocated \$50,000 toward a nitrogen study for the Back River embayment watershed. The Town submitted a letter to the Commission on January 4, 2004 detailing its commitment to coordinating this effort with the MEP.

### **CONCLUSION**

Based on the findings above, the Cape Cod Commission hereby concludes:

1. The benefits of the proposed modification outweigh the detriments. This conclusion is supported by findings SW-2, SW-9 and SW-10, T-7, as well as WR-3.
2. The modification as proposed is consistent with the 2002 Regional Policy Plan. This conclusion is supported by finding G3.
3. The project as proposed is consistent with local development by-laws. This conclusion supported by the finding G5.
4. Consistency with the Town of Bourne's LCP is not required per finding G5.

The Commission hereby approves with conditions the modification application of the Town of Bourne for the proposed addition of MSW to the Integrated Solid Waste Management Facility, provided the following conditions are met:

### **CONDITIONS**

#### **General**

*General Conditions G1, G2, G3, G4, G5, G6, G8, G9 and G10 of the original DRI decision (ENF #97031 dated February 17, 2000 and modified in August 2001) remain in effect (there is no G7 in the February 17, 2000 decision). General Conditions G11 and G12 are added to the original decision (ENF #97031 dated February 17, 2000 and modified August 2001)::*

G11. The proposed Integrated Solid Waste Management Facility shall be operated in accordance with both the DEP's ATO dated December 22, 2003, as well as subsequent ATO's

G12. This modification decision is valid until February 17, 2007.

#### **Solid Waste**

*Solid Waste Conditions SW1-SW4 replace conditions SW/HWM1-SW/HWM4 of the original DRI decision (ENF #97031 dated February 17, 2000 and modified in August 2001):*

SW1. The Town of Bourne shall submit annual tonnage data to the Commission indicating the tons of material composted, tons recycled and tons landfilled from each Cape Cod town. This analysis shall include a table indicating the tons of material or waste, and the waste shed(s) (Primary or Secondary) that the material or waste is being delivered from. The annual report shall be due on the anniversary of this decision.

SW2. The facility shall operate in accordance with the Integrated Solid Waste Management System described in Goal 4.2.1 of the 2002 Regional Policy Plan concerning management and disposal of accepted materials.

SW3. The facility shall not accept asbestos-containing material (ACM) except non-friable vinyl asbestos tile. If the Town wishes to pursue disposal of other types of ACM at the facility, it shall only be allowed to do so after successfully obtaining a Special Waste Determination Permit from the Department of Environmental Protection. The Town shall notify the Commission staff of the intent to seek a Special Waste Determination Permit from the DEP at least thirty (30) days prior to filing an application for such.

SW4. In the event that the ISWMF and/or its operations result in changes to the waste stream composition and tonnages described in findings SW1, SW2, and SW3 the applicant shall file for a modification subject to Section 7 of the Commission's Administrative Regulations (as amended).

#### **Hazardous Waste Management**

*Hazardous Waste Management conditions HWM1-HWM3 are added to the original DRI decision (ENF #97031 dated February 17, 2000 and modified in August 2001):*

HWM1. The facility shall not accept hazardous materials, hazardous wastes, motor vehicles, liquid or gaseous materials, radioactive materials or medical materials/wastes.

HWM2. One year from the date of the Commission's approval of this project, the applicant shall submit to Commission staff a report describing the facility's status as a generator of hazardous waste. The report shall include the facility's Generator Identification Number, its generator status for all wastes, and a description of all hazardous and/or Universal Wastes stored, handled and/or generated by the facility. This report shall include hazardous or Universal Wastes generated, stored or handled by other town departments or activities housed on the project site.

HWM3. One year from the date of the Commission's approval of this modification, the applicant shall submit to Commission staff a report describing the facility's intake of municipal combustor ash (MCA). The report shall include the quantity, in tons, of MCA accepted for disposal. It shall also identify the facility or facilities from which the MCA was generated, and shall describe the steps the Bourne ISWMF has in place to insure that it does not accept hazardous waste combustor ash.

#### Transportation

*Transportation Conditions of the original DRI decision (ENF #97031 dated February 17, 2004 and modified in August 2001) remain in effect.*

#### Natural Resources

*Natural Resources Conditions of the original DRI decision (ENF #97031 dated February 17, 2004 and modified in August 2001) remain in effect.*

#### Community Character

*Community Character Conditions of the original DRI decision (ENF #97031 dated February 17, 2004 and modified in August 2001) remain in effect.*

#### Water Resources

*Water Resource conditions WR1, WR2 and WR3 of the original DRI decision (ENF #97031 dated February 17, 2000 and modified in August 2001) remain in effect. The following Water Resource conditions have been added:*

WR4. Prior to issuance of a final Certificate of Compliance, the Town of Bourne shall provide findings of the first round of water-quality monitoring referenced in Finding WR3. The results of subsequent groundwater-monitoring rounds, including analyses required by MADEP for on-site wells, shall be submitted to the Commission as they become available to the applicant.

WR5. Prior to issuance of a Final Certificate of Compliance, and as required by the February 17, 2000 decision, the Town of Bourne shall provide results of the work plan referenced in finding WR11 and Attachment A to the Commission's February 17, 2000 DRI decision (as modified in August, 2001) and as further articulated in the Commission's letters of June 4, 2003 and December 30, 2003, the Town of Bourne's letter of January 4, 2004 and finding WR15.

**SUMMARY**

The Cape Cod Commission hereby approves with conditions the modification of the Bourne Department of Integrated Solid Waste Management DRI decision pursuant to Sections 12 and 13 of the Act, c. 716 of the Acts of 1989, as amended, for the proposed addition of municipal solid waste to the Integrated Solid Waste Management Facility which is located in Bourne, MA.

\_\_\_\_\_  
Susan Kadar, Chair

\_\_\_\_\_  
Date

Commonwealth of Massachusetts

County of Barnstable

On this \_\_\_\_\_ day of \_\_\_\_\_, 2004, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he)(she) signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
Commonwealth of Massachusetts

My Commission Expires:\_\_\_\_\_