

CITY OF NEWTON

IN BOARD OF ALDERMEN

PUBLIC FACILITIES COMMITTEE REPORT

WEDNESDAY, JULY 15, 2015

Present: Ald. Crossley (Chair), Lennon, Albright, Brousal-Glaser, Gentile, Laredo, and Lappin
Absent: Ald. Danberg

Also present: Ald. Baker, Blazar, Hess-Mahan, Kalis, Leary, Norton, Rice, Sangiolo, and Yates
City staff present: John Daghlian (Associate City Engineer), Maureen Lemieux (Chief of Staff/Chief Financial Officer), Shane Mark (Interim Commissioner of Public Works), Andy Savitz (Director of Sustainability), Alan Mandl (Assistant City Solicitor), Bruce Proia (Fire Chief), Robert DeRubeis (Commissioner of Parks and Recreation), and Marie Lawlor (Assistant City Solicitor)

#173-15 EVERSOURCE ENERGY requesting grant of location to install 55' ± of conduit in ELM STREET from Manhole #15996 northwesterly thence turning and running northeasterly to Pole # 137/3A to provide service to 111 Elm Street.
[06/15/15 @ 12:04 PM]

ACTION: **APPROVED 7-0**

NOTE: Maureen Carroll, Eversource Permit Representative, presented the request for a grant of location to install 55' of conduit to provide electrical service to a new building at 111 Elm Street. The building contains five or six units of housing and retail space on the first floor. The service to the building and the proposed conduit would be located underground.

The public hearing was opened and no one spoke for or against the petition. Ald. Brousal Glaser moved approval of the item, which carried unanimously.

#174-15 HIS HONOR THE MAYOR appointing JAMES McGONAGLE as Commissioner of the Public Works Department effective August 24, 2015, pursuant to §3-3 of the City Charter. (30 days 08/12/15) [07/06/15 @ 3:51 PM]

ACTION: **APPROVED 5-0-2 (Gentile and Laredo abstaining)**

NOTE: James McGonagle joined the committee to discuss his appointment as Commissioner of Public Works. Chief of Staff Maureen Lemieux introduced Mr. McGonagle to the Committee. Mr. McGonagle has over 27 years of experience as a Public Works professional. He has been with the City of Boston for the last five years as Director of Central Fleet. The Administration approached Mr. McGonagle to ask if he had any interest in becoming the Commissioner of Public Works in Newton and he said yes. Mr. McGonagle was recommended for the position by the city's Human Resources Recruitment Manager Mary O'Neill, who previously worked for the City of Boston.

Mr. McGonagle reviewed his experiences and spoke about his vision for the Department of Public Works. He would like the department to be proactive instead of reactive. He will

achieve that goal by working with all of the Public Works Department employees and getting their input on operations from the ground up, redeveloping policies and procedures in addition to bringing in new technology and products. Mr. McGonagle has seen the resolutions from the Board of Aldermen regarding snow operations, the Transportation Division and street and sidewalk reconstruction. He expects to meet with the Aldermen and staff regarding the best approach to accomplishing the requests in the resolutions.

There was some concern among some of the Committee members that Mr. McGonagle did not appear to have experience in some aspects of managing a large Public Works Department.

Although Mr. McGonagle's background is in fleet management, he has experience in other aspects of running a Department of Public Works and this is the next step in his professional progression. He is confident that he has the abilities and experience to do the job well. He managed 45 employees in Boston and was responsible for a fleet of 1,100 vehicles. He also oversaw the budget for the Central Fleet including the vehicle replacement program and managed \$15 million dollars in capital projects. The job also included working and providing support and guidance during snow events. The attached resume provides further details of Mr. McGonagle's skills and experiences. He has less experience with road reconstruction and the Utilities Division but expects to work with the Division heads and staff to get up to speed in those areas. He intends to bring new leadership and a change of environment to the Department of Public Works that would include the implementing a work order management system, team building, a preventative maintenance program, vehicle tracking software, and a training program. It is important to get to know all employees and provide support. Most employees want to do the right thing and do a good job. Mr. McGonagle is data driven and believes that if the department has good people and good processes, it will generate good products.

The new Commissioner expects to work with the City Engineer on developing a plan for long-range street and sidewalk reconstruction and maintenance. Mr. McGonagle expects to listen to, learn from, and then rely on the superintendents, supervisors, and employees for their expertise in road construction. He believes in hearing from the people in the field to see how things are really working. Once a plan is developed, there would need to be an evaluation of the total life-cycle costs to determine how to budget implementation. The city may have to invest more upfront to begin the process but adding new technology and product may cost less in the end. Investments in capital improvements often result in reductions to operational costs.

Mr. McGonagle is not yet familiar with Newton's snow operations plan but has experience with snow operations. In Boston, he recommended implementation of electronic mapping of snowplow routes, added efficient snow removal equipment, provided support and operational guidance during snow events. He pointed out that last winter was not the norm in terms of snowfall; therefore; Newton does not have to prepare for that type of winter next year but should have a plan in place to address extreme snowfall.

Mr. McGonagle expects to meet with the Aldermen regarding their concerns with the Department of Public Works. Although he feels there should be a chain of command in place in order to keep the Commissioner and Director of Operations in the loop, he is not opposed to

Aldermen contacting staff for information or a problem without going through the Commissioner. Committee members were pleased to hear this, as often times Aldermen know who to contact in order get a question answered immediately or get information on a project in their Ward. It was pointed out that the 24 Aldermen are a great resource for the Department of Public Works when it comes to citizen concerns. The Aldermen can be advocates for the department if they are aware of plans. It is important the Commissioner maintain a back and forth with the Board of Aldermen and include them in plan development and implementation. Mr. McGonagle responded that he understands that the Aldermen represent the citizens and that he is very approachable and works well with others. He would ask that the Aldermen share information and concerns.

Committee members felt that one of the top priorities for the new Commissioner is to fill the vacancies within the Transportation Division. The Division is currently severely understaffed, which has resulted in a work backlog. Committee members urged that Mr. McGonagle look at the best way fill those positions as soon as possible.

Several Committee members stated that the Commissioner should look at the standards of construction and quality control in the field. There have been complaints that the Public Works Department or its contractors are not putting out the best possible product. In order to provide the best product, the department may have to reduce the number of projects. Mr. McGonagle pointed out that it is also important to utilize vendors if the problems are related to materials. Generally, problems in construction are people, process or a combination of both.

The Chair was pleased with Mr. McGonagle's approach in terms of communication and technology. She pointed out that it is likely that implementation of some of the new technology and equipment will push up against the department's budget and that Mr. McGonagle will have to be a very strong advocate for funding. With that, Ald. Lennon moved approval, which carried by a vote of five in favor and two abstentions.

#358-14 FINANCE COMMITTEE requesting that the Public Facilities Committee receive updates on the clean-up of the Rumford Avenue Landfill every three months.
[09/11/14 @ 12:01 PM]

ACTION: **HELD 7-0**

NOTE: Interim Public Works Commissioner Shane Mark provided the Committee with an update on the Rumford Avenue Landfill cleanup. In May 2014, the city was informed by the Department of Environmental Protection (DEP) that it had violated DEP regulations and the existing Administrative Consent Order between the city and the DEP. The violations included failure to implement measures to manage the storage of excavates and maintain the storm water drainage system.

Some of the excavate stored at the landfill slid down the north slope into the drainage swale and penetrated the landfill cap. In addition, excavate slid into Wabasso Road, which is the access road for the north side of the Rumford site. The DEP issued an Administrative Consent Order with Penalty and Notice of Noncompliance (attached) that details the violations and provides a corrective course of action.

The Public Works Department has addressed 90% of the violations and the remaining work should be complete in a month. The repair of the fabric cap is complete but the city is having trouble obtaining the appropriate sand for filtration around the cap repair. The city's consultant is working on identifying a source for obtaining the sand. In addition, the city needs to push the excavate further from the perimeter of the landfill.

The Department of Public Works is not taking the excavate from roadwork to the Rumford site at this time. Excavate is being sent to the Elliot Street Public Works Yard to be crushed. The city hired a rock-crushing contractor who will begin crushing at Elliot Street next week. The crushing will take place between 7 am and 4 pm each weekday until it is complete. Several Aldermen asked if there would be an issue with the noise from the crushing. Mr. Mark explained that the city crushed rock at the Elliot Street Yard last year and received no complaints.

In the future, the Public Works Department plans to use a combination of hauling and piling excavate to ensure that there are no further violations. The plans also include hauling away the piles of street sweepings located at the Rumford site. The goal is to remove all excavate and sweepings from the Rumford site annually. The cost of hauling everything currently at Rumford Avenue is estimated at \$2 million.

The Department of Public Works and the DEP have agreed to a completion date of mid-summer, which is right around the corner. The work left is minor, once a contractor is hired, and the sand purchased, should take approximately two weeks to complete. Committee members voiced concern that the city is likely to receive a second fine if the work is not complete in the next few weeks. Mr. Mark expects that the work will be complete in time to avoid any further fines from the DEP. Mr. Mark and Engineering Division Project Manager Frank Nichols are working to bring the project to completion. Mr. Mark added that the city is in conversations with the DEP through the consultant regarding the progress at the Rumford landfill and the DEP is pleased.

Note: Interim Commissioner of Public Works Shane Mark provided the attached memo dated July 2015 confirming that the city is now in compliance with the DEP regulations related to the Rumford Avenue Landfill.

Ald. Laredo moved hold on the item until the work is complete, which carried unanimously.

#129-15(2) COMMISSIONER OF PUBLIC WORKS requesting approval of the addition of a left turning lane from Winchester Street onto Nahanton Street. [06/11/15 @ 12:56 PM]

ACTION: NO ACTION NECESSARY 7-0

NOTE: Transportation Director William Paille provided the Committee with an e-mail (attached) stating that the city's consultant newest plan for improvements at the intersection of

Winchester Street and Nahanton Street include restriping Winchester Street for a separate left turn and right turn lane onto Nahanton Street. Winchester Street can accommodate the turning lanes without widening the street. The improvements do not include any other geometric changes to either Winchester Street or Nahanton Street; therefore, the improvements do not require Board of Aldermen approval. Ald. Lappin moved no action necessary, which carried unanimously.

#245-12 RECODIFICATION COMMITTEE recommending that Chapter 11, RECYCLING AND TRASH as most recently amended by Ordinance Z-68 and Z-87, dated 6/21/10 and 5/16/11, respectively, be reviewed and be amended as necessary.

ACTION: **APPROVED 7-0**

NOTE: Assistant City Solicitor reviewed the proposed ordinance changes related to recycling and trash. There are a number of housekeeping and small substantive changes being proposed to clarify the ordinances within Chapter 11. The redline version of Chapter 11 was attached to the agenda. The draft changes include the separation of definitions from substantive language as it relates to moveouts and cleanouts, relocating all fines under one section, and clarifying language. None of the proposed amendments result in changes to the city's recycling and trash collection program. Recodification Committee Member Ald. Baker reviewed the proposed amendments and agreed that they are appropriate. Ald. Lappin moved approval, which carried by a vote of seven in favor and none opposed.

REFERRED TO PROGRAMS & SERVICES & PUBLIC FACILITIES COMMITTEES

#141-15(2) ALD LEARY, CROSSLEY, BROUSAL-GLASER, SANGIOLO, DANBERG, HESS-MAHAN, NORTON & YATES requesting a resolution to the State Legislature in support of House Bill 2870, an Act relative to protecting consumers of gas and electricity from paying for leaked and unaccounted for gas. [06/18/15 @ 4:50 PM]

PROGRAMS & SERVICES APPROVED 8-0 on 07/15/15

ACTION: **APPROVED 7-0**

NOTE: The Programs & Services Committee and the Public Facilities Committee met jointly to discuss the item. Ald. Leary explained that she docketed the request for a resolution supporting a proposed bill before State legislature that seeks to protect consumers of gas and electricity from paying for leaked and unaccounted for gas. The bill seeks to prohibit gas providers from charging consumers for gas that is unaccounted. Lost and unaccounted gas in Massachusetts totals \$90 million. Leaking gas is an environmental concern for a number of reasons including that it contains methane, which is a significant contributor to greenhouse gas emissions/climate change. In addition, gas leaks are also responsible for killing vegetation and trees in the area of leaks. Ald. Leary provided the Committees with a copy of a resolution from the city of Waltham to use as a model to draft a resolution if the item is approved.

There was some concern that if the utilities do not receive the money for unaccounted gas, it will further delay their ability to finance repair of gas leaks. It was explained that the

proposed bill is meant to provide incentive to the gas providers to repair their infrastructure for which they may increase rates to diminish their losses and develop improved services.

Members of both Committees supported the proposed resolution and Ald. Leary moved approval of the resolution in the Programs & Services Committee, which carried unanimously. Ald. Albright moved approval in the Public Facilities Committee, which carried unanimously.

REFERRED TO PROG & SERV AND PUBLIC FACILITIES COMMITTEES

#141-15 ALD. BROUSAL-GLASER, SANGIOLO, HESS-MAHAN, COTE, NORTON AND ALBRIGHT requesting a discussion with the Director of Urban Forestry, a representative of the Department of Public Works and a representative of the Law Department about tracking and improving the condition of the gas utility infrastructure in Newton, new state statutes governing infrastructure repairs, coordination of increased repair work with city operations, the status of negotiations with National Grid to compensate for tree deaths resulting from gas leaks, and the possibility of creating a utilities working group to monitor progress on these and related issues. [05/26/15 @ 2:52 PM]

PROGRAMS & SERVICES HELD 8-0 on 07/15/15

ACTION: **HELD 7-0**

NOTE: The Committee met jointly with the Programs & Services Committee to discuss the item, which was taken up first so as to inform the discussion of the proposed resolution. Assistant City Solicitor Alan Mandl provided a status report on the legal issues related to compensation from National Grid for tree deaths resulting from gas leaks. The trees were identified in a study completed in 2010 and issued in January 2011. The city and National Grid only began negotiations in September 2014. In 2014, the city sent National Grid a letter requesting that National Grid replace 220 trees that have already been removed and prune 190 existing trees that have damage from gas leaks. The city is in the process of going back out to each of the 190 locations to see if the needs of the trees have changed. Director of Urban Forestry Marc Welch will also be reviewing each tree with an Arborist from National Grid.

The city met with National Grid in January 2015 and agreed to joint inspections of the trees to allow National Grid to come up with a counter proposal. The inspections have not taken place due in part to numerous delays because of the severe winter. The city entered into a “standstill” agreement with National Grid in May 2015. A standstill agreement is an agreement under which litigation is forestalled between the two parties. National Grid has committed to inspecting the trees sometime in the first week of August.

The Town of Brookline filed a suit against National Grid in 2010 for compensation for trees killed by gas leaks, which has not moved forward. Mr. Mandl recently contacted Brookline to request an update on their litigation and expects to hear back on that shortly. The city is working on drafting a complaint to file against National Grid. It was suggested that the city prepare the complaint and file it in Superior Court, as it could motivate National Grid to meet for the inspections and negotiate a settlement. Aldermen were supportive of pursuing a lawsuit and there was mention of looking into filling a joint lawsuit with other municipalities.

Members of both Committees pointed out that it is likely that additional trees were damaged or killed due to gas leaks since the study and asked how the city intends to recoup damages for those trees. Mr. Mandl stated that the requested compensation pertains to the information contained in the study but the city has the right to seek further damages for additional trees. Commissioner of Parks and Recreation Bob DeRubeis added that Marc Welch probably has an up to date list of damaged trees.

Commissioner DeRubeis informed the Committees that Mr. Welch is already working with National Grid on coordinating tree plantings to ensure that the plantings are not within the vicinity of gas leaks. It is difficult to find spots to plant street trees that are not in the vicinity of a gas pipe, as most streets contain gas mains and pipes for house connections. Mr. Welch is also mapping out known leaks. National Grid is required to provide an annual list of gas leaks to the Department of Public Utilities that includes the grade of each leak. Category 1 leaks are considered to be existing or probable hazards to people or property and require the immediate action of the company supplying the gas. Grade 2 leaks are non-hazardous when discovered but are likely to be a future hazard and should be repaired within 15 months of discovery. A grade 3 leak is non-hazardous and can be expected to remain non-hazardous, but should be reevaluated within 15 months of being reported.

Fire Chief Bruce Proia explained National Grid is required to notify the Fire Department of all Grade 1 leaks and immediately address those leaks. The Chief stated that there are between three and four Grade 1 leaks in the city per week. The Fire Department works with National Grid on the Grade 2 leaks. Chief Proia added that he continues to work with National Grid and Eversource on manhole explosions. There have been three manhole explosions in the area of Needham Street. There was also a manhole fire on Centre Street in Newton Corner. Chief Proia explained that the majority of manhole explosions are the result of electrical issues and not gas leaks. Underground cables become frayed from aging, corrosive chemicals, overload or rats biting them. These electrical wires heat up the paper, lead and rubber insulation and the insulation smolders and catches on fire, releasing gases. The pressure from the gas builds up inside the manhole and the electrical wires arc and ignites the gases, causing a powerful manhole explosion.

The gas infrastructure within the city is very old and the gas company tends to address leaks by doing the lowest cost repair possible. The State's Department of Public Utilities (DPU) recently approved regulations to allow gas companies to increase rates in order to repair gas leaks, which is based on 2014 state legislation but the legislation does not specify the nature of the required repair. The DPU has the authority to enforce legislation pertaining to National Grid and other gas utilities.

A National Grid list of the planned proactive main replacement miles for Calendar Year 2015 and a list of proactive main replacement miles for Calendar Years 2016 – 2019 were attached to the Committee agenda. Members of both Committees requested that the Administration request that National Grid provide an overall plan for Newton. The city's Public Works Department and National Grid are sharing their five-year construction plan to coordinate

work. Interim Commissioner of Public Works Shane Mark added that he, Chief Proia, and Alan Mandl are meeting with the utilities regularly to discuss the manhole explosions.

It was suggested that the Board of Aldermen request that the Administration establish a working group to address the gas leaks. President Lennon and the Chairs of both Committees will continue discussion regarding the establishment of a working group. In addition, there was a proposal to docket an item requesting a resolution from the Board to the Mayor requesting that the city pursue litigation to recover damages and remediation for damages to city trees from gas leaks from National Grid. All members of both Committees supported docketing the request for a resolution. Chief of Staff Maureen Lemieux assured the Committees that she had heard the concerns. Ald. Albright and Ald. Hess-Mahan moved hold in their respective Committees in order to continue discussions. Both motions to hold were supported by unanimous votes in Committee.

All other items before the Committee were held without discussion and the Committee adjourned at 9:40 PM.

Respectfully submitted,

Deborah Crossley, Chairman

PROFESSIONAL SUMMARY

Versatile Public Works professional successful in spearheading and completing comprehensive reorganizations and capital improvement projects while maintaining positive relations between management and employees, both union and non. Natural leader and skilled negotiator with a commitment to excellence.

SKILLS

- Process improvement techniques
- Crisis and emergency communications
- Sound judgment
- Labor relations and negotiations
- Operations management
- Budgeting

WORK HISTORY

Director of Central Fleet, 09/2010 to Current
City Of Boston – Boston, MA

- Managed and developed a \$2.5 million annual operating budget with a \$6 million yearly vehicle replacement schedule.
- Reorganized entire fleet structure to include technician career ladder through ASE certification, implemented preventive maintenance program.
- Achieved ASE Blue Seal Certified Facility recognition.
- Named as one of Government Fleet Magazines Top 100 Fleets 2013, 2014, 2015.
- Managed and maintained 7 fueling sites throughout the City.
- Maintained support and provided operational guidance during snow events for outside departments.
- Initiated the planning and construction of a \$15 million capital upgrade to facility.
- Established close working relationships with other municipalities and governmental agencies to achieve better use of resources and increase efficiencies .
- Completed an upgrade of the Fleet Management System to achieve increased reporting, fuel management and replacement planning.
- Conducted weekly production and operations contractor meetings, which facilitated stronger communication and the ability to resolve critical issues.
- Spearheaded sustainability efforts, including adding fuel reduction and alternative fuel vehicles to the fleet, resulting in achieving NAFA sustainable fleet accreditation.
- Recommended process and systems improvements such as electronic mapping of snowplow routes, addition of efficient snow removal/plowing equipment along with asphalt repair products and equipment.
- Assessed vendor products and maintained positive vendor relations.
- Established operational objectives and work plans and delegated assignments to subordinate managers.

Leader, 09/2001 to 09/2010

Town of Groton Public Works – Groton, CT

- Maintained fleet of 350 Public Works, Water Pollution Control, Parks and Recreation, Fire, Police, and EMS vehicles and equipment
- Formulated a safety and hazardous chemical handling and storage program to comply with OSHA, DEP and Town requirements.
- Unit President, United Steelworkers of America, Local 9411 from 9/05 - 9/10. Negotiated labor agreements, developed labor and retirement contract proposals between the Town and the Union, organized union meetings and oversaw voting procedures.

Interim Waste Transfer Station Coordinator, 10/2008 to 04/2009

Town of Groton Public Works – Groton, CT

- Responded to citizen concerns and maintained positive public relations
- Organized transportation for removal of recyclables and solid waste.

Chief Equipment Technician, 09/1988 to 09/2001

Town of Groton Public Works – Groton, CT

CERTIFICATIONS

- Certified Automotive Fleet Manager(CAFM), NAFA Fleet Management Association 2010–2020
- Certified Public Fleet Professional(CPFP), American Public Works Association 2009–2019

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the matter of:)
)
City of Newton)
)
(Rumford Avenue Landfill))

File No.: ACOP- NE-14-4001
FMF #: 39662

DAVID A. OLSON, CHIEF
NEWTON, MA 02459

2014 AUG 27 AM 10:38

RECEIVED
NEWTON CITY HALL

ADMINISTRATIVE CONSENT ORDER WITH PENALTY
AND
NOTICE OF NONCOMPLIANCE

I. THE PARTIES

1. The Department of Environmental Protection ("Department" or "MassDEP") is a duly constituted agency of the Commonwealth of Massachusetts established pursuant to M.G.L. c. 21A, § 7. MassDEP maintains its principal office at One Winter Street, Boston, Massachusetts 02108, and its Northeast Regional Office at 205B Lowell Street, Wilmington, Massachusetts.
2. The City of Newton ("Respondent") is a municipal corporation located in Middlesex County and duly organized under the laws of the Commonwealth of Massachusetts, with its principal offices located at Newton City Hall, 1000 Commonwealth Avenue, Newton, Massachusetts 02459. The City owns the Rumford Avenue Landfill located at 121 Rumford Avenue in Newton, Massachusetts (the "Landfill").

II. STATEMENT OF FACTS AND LAW

3. MassDEP is responsible for the implementation and enforcement of M.G.L. c. 111, §§ 150A and 150A1/2, the Solid Waste Management Regulations at 310 CMR 19.000, and the Site Assignment Regulations for Solid Waste Facilities at 310 CMR 16.00. MassDEP has authority under M.G.L. c. 21A, § 16 and the Administrative Penalty Regulations at 310 CMR 5.00 to assess civil administrative penalties to persons in noncompliance with the laws and regulations set forth above.
4. Respondent is the owner and operator of a capped and closed Landfill located at 121 Rumford Avenue in Newton Massachusetts.
5. The following facts and allegations have led MassDEP to issue this Consent Order:
 - A. On July 1, 1996, Respondent and MassDEP entered into an Administrative Consent Order, File No. ACO-NE-95-4005, (the "95 Order") for the closure of

the Landfill. The 95 Order provided for, but was not limited to, the capping of the Landfill and the post-closure use of a portion of the Landfill by the City of Newton Department of Public Works (the "DPW") as a composting facility and for the receipt, storage, processing, and recycling of materials including, but not limited to, excavate from DPW construction projects (the "Post-Closure Uses").

- B. On August 13, 1997, MassDEP approved Respondent's application, category BWP SW25 *Corrective Action Design*, Transmittal No. 103516 for the closure and capping of the Landfill (the "Closure Plan"), and the Respondent's application, category BWP SW37 *Minor Post-Closure Permit*, Transmittal No. 102385 (the "Post-Closure Permit"). The Post-Closure Permit approved the use of approximately 11 acres of the Landfill's plateau, designated as Area B, for the Post-Closure Uses.
- C. On October 12, 1999, MassDEP approved Respondent's report titled: "*Newton, Massachusetts, Certification Report, Closure of the Rumford Avenue Landfill, July 1998*" (the Certification Report), and notified Respondent that it had fulfilled the requirements of the 95 Order.
- D. On April 15, 2014, MassDEP received a complaint regarding excavate and concrete dumped by the DPW at the Landfill impacting a cove adjacent to the northern side of the Landfill.
- E. On April 15, 2014, MassDEP personnel inspected the Landfill and observed a large stockpile of soil, stone and concrete slabs ("Excavate") on the north side of the Landfill extending down the upper portion of the northern side slope. DPW personnel at the Landfill informed MassDEP that during 2013-2014 the DPW constructed the stockpile out of soil, asphalt and concrete from DPW road excavation work.
- F. On April 15, 2014, MassDEP personnel estimated the stockpile was from ten (10) to twenty (20) feet in height, approximately six-hundred (600) feet long, and from forty (40) to eighty (80) feet wide. MassDEP estimates that the volume of Excavate in the stockpile was approximately twenty-thousand (20,000) to thirty-thousand (30,000) cubic yards. Respondent had failed to manage the stockpiled Excavate within the area of the Landfill (Area B) approved by MassDEP in violation of the Post-Closure Use Permit and 310 CMR 19.000, including but not limited to, 310 CMR 19.143(5)(e): *Post-Closure Use of Landfills* and 310 CMR 19.043(5)(a) *Duty to Comply*.
- G. On April 15, 2014, MassDEP personnel, also, observed that Excavate from the stockpile had slid down the northern side slope of the Landfill into and blocked approximately one-hundred and fifty (150) feet of a rip rap drainage swale. Respondent had failed to implement measures to properly manage the material and maintain the storm water drainage system, including but not limited to, the rip rap drainage swale in violation of the requirements of 310 CMR 19.000, including

but not limited to, the requirements of 310 CMR 19.142(5)(a) and (b): *Landfill Post-Closure Requirements*

- H. On April 15, 2014, MassDEP personnel, also, observed Excavate had slid into and partially blocked Wabasso Road, the access road located at the base of the northern side slope. Respondent failed to implement measures to properly manage the Excavate and allowed it to impact the access road in violation of the requirements of 310 CMR 19.000, including but not limited to, the requirements of 310 CMR 19.142(5)(e): *Landfill Post-Closure Requirements*.
- I. On April 15, 2014, MassDEP observed two landfill gas vents that had been impacted by the stockpiled material. Respondent failed to maintain the landfill gas vents in violation of 310 CMR 19.000 including, without limitation, 310 CMR 19.142(5)(f).

6. Therefore, based upon the facts described above and the Respondent's activities of stockpiling and handling excavate material in non-compliance with approved permits, plans or approvals for the solid waste management facility, MassDEP has determined that Respondent has violated the following requirements of 310 CMR 19.000, the Massachusetts Solid Waste Management Facility Regulations:

- A. 310 CMR 19.043 (5): Conditions for Permits and Other Approvals that reads in part:

"The following conditions shall apply to all owners and operators..."

- (a) Duty to Comply. *The owner and operator shall comply at all times with the terms and conditions of the permit or other approval, 310 CMR 19.000, M.G.L. c. 111, § 150A, and all other applicable state and federal statutes and regulations, including, but not limited to, the permit review criteria at 310 CMR 19.038(2)(a)1. through 10.*
- (b) Duty to Maintain. *The owner and operator shall always operate and maintain all facilities, environmental control and monitoring systems, vehicles and equipment as required by 310 CMR 19.000 or by the facility permit or other approval..."*

- B. 310 CMR 19.142(5): Landfill Post-Closure Requirements that reads in part:

"During the post-closure period the owner or operator (or successors or assigns thereto) shall perform the following activities on any closed portion of the facility:

- (a) *take corrective actions to remediate and/or mitigate conditions that would compromise the integrity and purpose for the final cover;*
- (b) *maintain the integrity of the liner system and the final cover system;*
- (c) *collect leachate from and monitor and maintain leachate collection system(s);*
- (d) *monitor and maintain the environmental monitoring systems for surface water, ground water and air quality;*
- (e) *maintain access roads;*
- (f) *maintain landfill gas control systems;*

(g) protect and maintain surveyed benchmarks; and
(h) have the landfill inspected by a third-party inspector in accordance with 310 CMR 19.018 and such third-party inspection shall be conducted in accordance with the frequency and other requirements of 310 CMR 19.018, unless more frequent inspections or more stringent requirements are contained in the terms of any approval, order or other document issued by the Department pursuant to 310 CMR 19.000."

III. DISPOSITION AND ORDER

For the reasons set forth above, MassDEP hereby issues, and Respondent hereby consents to, this Order:

7. The parties have agreed to enter into this Consent Order because they agree that it is in their own interests, and in the public interest, to proceed promptly with the actions called for herein rather than to expend additional time and resources litigating the matters set forth above. Respondent enters into this Consent Order without admitting or denying the facts or allegations set forth herein. However, Respondent agrees not to contest such facts and allegations for purposes of the issuance or enforcement of this Consent Order.

8. MassDEP's authority to issue this Consent Order is conferred by the Statutes and Regulations cited in Part II of this Consent Order.

9. Respondent shall:

A. Upon the effective date of this Consent Order, take the actions necessary to return to compliance with the regulations set forth at 310 CMR 19.000: *Solid Waste Management*, including, without limitation, the following:

- i. Cease all stockpiling activities at the Facility that are not in compliance with the requirements of 310 CMR 19.000 and the approved 1998 landfill closure certification. These activities include, but are not limited to, stockpiling excavate material in a manner that impacts the final cover system, drainage swales, landfill gas controls and vegetative cover;
- ii. Ensure that no additional Excavate and other material moves down the north side slope of the Landfill or impacts the northern drainage swale, vegetative cover, access road or adjacent cove; and
- iii. Store and stockpile any additional Excavate and other material in accordance with all MassDEP regulations, permit approvals and in accordance with the requirements set forth in this Consent Order.

B. No later than ^{sixty (60)} ~~forty-five (45)~~ days after the effective date of this Consent Order, submit to MassDEP for review and approval as an application category BWP SW-22 *Minor Modification of Existing Landfill*, a scope of work (SOW) to conduct corrective actions at the Landfill that includes, without limitation, the following:

mll
8/27/14

- i. A site plan and description of the locations of the types and quantities of material at the Landfill, including, without limitation, Excavate and compost;
 - ii. A plan for the removal of all Excavate and other materials from outside of Area B of the Landfill including, without limitation, the north side slope, drainage swale and access road;
 - iii. Inspection, identification, and evaluation of any damage to the final cap including, but not limited to, the vegetative cover, the storm water control system, landfill gas system, and the environmental monitoring systems;
 - iv. A plan for the restoration and repair of the landfill cap system including, without limitation, the landfill gas system, the storm water control system, the access road(s) and the environmental monitoring systems;
 - v. Identification of any potential public nuisances and adverse impacts from the proposed corrective actions and measures for controlling such public nuisances and impacts;
 - vi. Provide that the SOW shall be conducted under the supervision and direction of an independent Massachusetts Registered Professional Engineer experienced in solid waste landfill design and operation; and
 - vii. A schedule for implementation of the SOW.
- C. No later than ~~sixty (60)~~ ^{seventy-five (75)} days after the effective date of this Consent Order, submit to MassDEP, as an application category BWP SW-37 *Post-Closure Use Minor*, for review and approval a plan for continuing the post-closure activities at the Landfill (the "PC-Use Plan"). The PC-Use Plan shall describe the procedures the Respondent proposes to implement to continue the Post-Closure Uses at the Landfill. The PC-Use Plan shall include, but not be limited to, the following:
- i. A description of the Post-Closure Uses including types and quantities of materials;
 - ii. A site plan that shows, without limitation, the areas within which each Post-Closure Use will occur;
 - iii. Procedures for delineating the area(s) in which the Post-Closure Use will be conducted; and
 - iv. Post-closure maintenance procedures.
- D. Respondent shall submit all applications required by this Consent Order to MassDEP pursuant to 310 CMR 4.00. The Respondent shall provide any additional information required by MassDEP on an application, without limitation, including that required by any Notice of Administrative or Technical Deficiency issued by MassDEP pursuant to 310 CMR 4.00 and this Consent Order, within thirty (30) days of the date of such notice or request, unless Respondent requests and MassDEP approves, at its sole discretion, an alternative schedule.
- mll*
8/27/14

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10. Except as otherwise provided, all notices, submittals and other communications required by this Consent Order shall be directed to:

John A. Carrigan
MassDEP-Northeast Regional Office
Bureau of Waste Prevention
205B Lowell Street
Wilmington, MA, 01887

Such notices, submittals and other communications shall be considered delivered by Respondent upon receipt by MassDEP. In accordance with 310 CMR 16.07, any person, required by 310 CMR 16.00 or any order issued by the Department, to submit papers shall identify themselves by name, profession, and relationship to the Respondent and legal interest in the Facility, and make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties both civil and criminal for submitting false information including possible fines and imprisonment."

11. Actions required by this Consent Order shall be taken in accordance with all applicable federal, state, and local laws, regulations and approvals. This Consent Order shall not be construed as, nor operate as, relieving Respondent or any other person of the necessity of complying with all applicable federal, state, and local laws, regulations and approvals.

12. For purposes of M.G.L. c. 21A, § 16 and 310 CMR 5.00, this Consent Order shall also serve as a Notice of Noncompliance for Respondent's noncompliance with the requirements cited in Part II above. MassDEP hereby determines, and Respondent hereby agrees, that any deadlines set forth in this Consent Order constitute reasonable periods of time for Respondent to take the actions described.

13. Respondent shall pay to the Commonwealth the sum of **thirty-four thousand, five hundred dollars (\$34,500.00)** as a civil administrative penalty for the violations identified in Part II above, as follows:

A. **Within sixty (60) days of the effective date** of this Consent Order, Respondent shall pay to the Commonwealth **twelve thousand dollars (\$12,000.00)**; and

B. MassDEP hereby agrees to suspend payment of the sum of **twenty-two thousand, five hundred dollars (\$22,500.00)**; provided, however, that if Respondent violates any provision of this Consent Order, or further violates any of the regulations cited in Part II above within **three years** of the effective date of this Consent Order, Respondent shall pay to the Commonwealth the remaining amount of **twenty-two thousand, five hundred dollars (\$22,500.00)** within thirty (30) days of the date MassDEP issues Respondent a written demand

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for payment. This paragraph shall not be construed or operate to bar, diminish, adjudicate, or in any way affect, any legal or equitable right of MassDEP to assess Respondent additional civil administrative penalties, or to seek any other relief, with respect to any future violation of any provision of this Consent Order or any law or regulation.

Respondent shall pay all civil administrative penalties due under this Consent Order, including suspended and stipulated penalties, by certified check, cashier's check, or money order made payable to the Commonwealth of Massachusetts, or by electronic funds transfer. If payment is made by certified check, cashier's check, or money order, Respondent shall clearly print on the face of its payment Respondent's full name, the file number appearing on the first page of this Consent Order, and Respondent's Federal Employer Identification Number, and shall mail it to:

Commonwealth of Massachusetts
Department of Environmental Protection
Commonwealth Master Lockbox
P.O. Box 3982
Boston, Massachusetts 02241-3982

14. Respondent understands, and hereby waives, its right to an adjudicatory hearing before MassDEP on, and judicial review of, the issuance and terms of this Consent Order and to notice of any such rights of review. This waiver does not extend to any other order issued by the MassDEP.

15. This Consent Order may be modified only by written agreement of the parties hereto.

16. The provisions of this Consent Order are severable, and if any provision of this Consent Order or the application thereof is held invalid, such invalidity shall not affect the validity of other provisions of this Consent Order, or the application of such other provisions, which can be given effect without the invalid provision or application, provided however, that MassDEP shall have the discretion to void this Consent Order in the event of any such invalidity.

17. Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting (i) any legal or equitable right of MassDEP to issue any additional order or to seek any other relief with respect to the subject matter covered by this Consent Order, or (ii) any legal or equitable right of MassDEP to pursue any other claim, action, suit, cause of action, or demand which MassDEP may have with respect to the subject matter covered by this Consent Order, including, without limitation, any action to enforce this Consent Order in an administrative or judicial proceeding.

18. This Consent Order shall not be construed or operate as barring, diminishing, adjudicating, or in any way affecting, any legal or equitable right of MassDEP or Respondent with respect to any subject matter not covered by this Consent Order.

19. This Consent Order shall be binding upon Respondent and upon Respondent's heirs, successors and assigns. Respondent shall not violate this Consent Order and shall not allow or suffer Respondent's members, managers, employees, agents, contractors or consultants to violate

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this Consent Order. Until Respondent has fully complied with this Consent Order, Respondent shall provide a copy of this Consent Order to each successor or assignee at such time that any succession or assignment occurs.

20. In addition to the penalty set forth in this Consent Order (including any suspended penalty), Respondent shall pay stipulated civil administrative penalties to the Commonwealth in accordance with the following schedule if Respondent violates any provision of this Consent Order:

For each day, or portion thereof, of each violation, Respondent shall pay stipulated civil administrative penalties in the following amounts:

<u>Period of Violation</u>	<u>Penalty per day</u>
1 st through 15 th days	\$1,000 per day
16 th through 30 th days	\$2,000 per day
31 st day and thereafter	\$4,000 per day

Stipulated civil administrative penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day Respondent corrects the violation or completes performance, whichever is applicable. Stipulated civil administrative penalties shall accrue regardless of whether MassDEP has notified Respondent of a violation or act of noncompliance. All stipulated civil administrative penalties accruing under this Consent Order shall be paid within thirty (30) days of the date MassDEP issues Respondent a written demand for payment. If simultaneous violations occur, separate penalties shall accrue for separate violations of this Consent Order. The payment of stipulated civil administrative penalties shall not alter in any way Respondent's obligation to complete performance as required by this Consent Order. MassDEP reserves its right to elect to pursue alternative remedies and alternative civil and criminal penalties which may be available by reason of Respondent's failure to comply with the requirements of this Consent Order. In the event MassDEP collects alternative civil administrative penalties, Respondent shall not be required to pay stipulated civil administrative penalties pursuant to this Consent Order for the same violations.

Respondent reserves whatever rights it may have to contest MassDEP's determination that Respondent failed to comply with the Consent Order and/or to contest the accuracy of MassDEP's calculation of the amount of the stipulated civil administrative penalty. Upon exhaustion of such rights, if any, Respondent agrees to assent to the entry of a court judgment if such court judgment is necessary to execute a claim for stipulated penalties under this Consent Order.

21. Respondent shall pay all civil administrative penalties due under this Consent Order, including suspended and stipulated penalties, by certified check, cashier's check, or money order made payable to the Commonwealth of Massachusetts, or by electronic funds transfer. If payment is made by certified check, cashier's check, or money order, Respondent shall clearly print on the face of its payment Respondent's full name, the file number appearing on the first page of this Consent Order, and the Respondent's Federal Employer Identification Number, and shall mail it to:

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Commonwealth of Massachusetts
Department of Environmental Protection
Commonwealth Master Lockbox
P.O. Box 3982
Boston, Massachusetts 02241-3982

If payment is made by electronic funds transfer, Respondent must complete the attached form "Electronic Funds Transfer Request" and, within 10 days of the effective date of this Consent Order, submit it to Director, BAS Division of Fiscal Management via Facsimile at the MassDEP Revenue Fax Number 617-292-5824 or via mail to:

Department of Environmental Protection
Attn: Revenue Unit
1 Winter Street, 4th Floor
Boston, MA 02108

In the event Respondent fails to pay in full any civil administrative penalty as required by this Consent Order, then pursuant to M.G.L. c. 21A, § 16, Respondent shall be liable to the Commonwealth for up to three (3) times the amount of the civil administrative penalty, together with costs, plus interest on the balance due from the time such penalty became due and attorneys' fees, including all costs and attorneys' fees incurred in the collection thereof. The rate of interest shall be the rate set forth in M.G.L. c. 231, § 6C.

22. Failure on the part of MassDEP to complain of any action or inaction on the part of Respondent shall not constitute a waiver by MassDEP of any of its rights under this Consent Order. Further, no waiver by MassDEP of any provision of this Consent Order shall be construed as a waiver of any other provision of this Consent Order.

23. To the extent authorized by the current owner, Respondent agrees to provide MassDEP, and MassDEP's employees, representatives and contractors, access at all reasonable times to the Facility for purposes of conducting any activity related to its oversight of this Consent Order. Notwithstanding any provision of this Consent Order, MassDEP retains all of its access authorities and rights under applicable state and federal law.

24. This Consent Order may be executed in one or more counterpart originals, all of which when executed shall constitute a single Consent Order.

25. The undersigned certify that they are fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the party on whose behalf they are signing this Consent Order.

26. This Consent Order shall become effective on the date that it is executed by MassDEP.

27. Respondent's obligations under this Consent Order shall cease upon Respondent's completion of all actions and payments required pursuant to Paragraphs 9 through 21 of this

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Consent Order and MassDEP's issuance of a return to compliance letter stating that Respondent has completed the requirements of said Paragraphs.

Consented to by:
City of Newton

By: Maureen Lemieux 8/27/14

~~Setti Warren~~ Maureen Lemieux
Mayor Chief Financial Officer/Chief of Staff
1000 Commonwealth Avenue
Newton, MA 02459

Date: August __, 2014

Issued by:
DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: _____

Eric S. Worrall
Acting Regional Director
MassDEP – Northeast Regional Office
205B Lowell Street
Wilmington, Massachusetts

Date: August __, 2014

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ATTACHMENT

(Respondent Letterhead required)

Department of Environmental Protection
Attn: Revenue Unit
1 Winter Street, 4th Floor
Boston, MA 02108

RE: Electronic Funds Transfer Request
[Respondent fills in Enforcement Document Number, e.g. ACOP-CE-11-3A006]

Director, BAS Division of Fiscal Management:

In order to complete a wire transfer for payment of the penalty assessed under (list enforcement number here), (put Respondent name here) requests the following information:

DEP's legal address,
DEP's Federal Tax Identification Number,
The name and address of DEP's bank,
DEP's account name and number, and
The ABA/routing number for DEP's account.

Please mail or fax this information to:
Respondent's contact name:
Address:

Fax number:

Sincerely,

Signed:
Print name:
Title:
Work number:

Date:

M E M O R A N D U M - N E W T O N
D E P A R T M E N T O F P U B L I C W O R K S

DATE: July 31, 2015
TO: Deborah Crossley- Public Facilities Chair
FROM: Shane Mark – Interim Commissioner, Department of
Public Works
RE: Rumford Avenue Mitigation from DEP Administrative Consent Order

During the Public Facilities Meeting on July 15, 2015 I provided an update regarding the mitigation of the Rumford Avenue site related to the Administrative Consent Order (ACO) issued by the Massachusetts Department of Environmental Protection in May 2014. After checking further with the City hired consultant CDM Smith I am pleased to report that the conditions of the ACO have been met. The sand cover for the liner and the pulling back of the excavation material are additional steps the Department of Public Works committed to the DEP to prevent future occurrences. These are not tied to the ACO and are simply best management practices for the site.

Shawna Sullivan

From: William Paille
Sent: Tuesday, July 07, 2015 3:19 PM
To: Shawna Sullivan
Cc: Deborah J. Crossley
Subject: Nahanton & Winchester

Shawna,

I have spoken with WorldTech and they inform me the latest plan for this intersection includes retaining the existing lane configuration and width along both Nahanton and Winchester. And although the proposed improvements include restriping Winchester to accommodate a separate left turn and right turn lane onto Nahanton, the existing paved width will not change as a result.

Therefore, I do not believe Public Facilities needs to review or approve the proposed improvements at this intersection.

Bill