

Thursday, June 13, 2013

Hon Mayor and Members of the Township Council,

I am pleased to announce the Order to Show Cause which has been executed by Judge Coburn on this date. The Order essentially requires Strategic Environmental Partners (SEP) to show cause before the Court as to why judgment should not be entered providing the Township and the New Jersey Department of Environmental Protection (NJDEP) with immediate access to site for the purpose of alleviating the emissions of hydrogen sulfide gas (H₂S) from the site. The Order allows the NJDEP to apply a topical material, "Posi-Shell", on all areas of the site from which H₂S gas emissions are currently emanating. It also allows the NJDEP to install a gas management system as well as other remedial actions. If the Order is entered as drafted, all costs incurred by the NJDEP shall become a lien against the property and the State will be allowed to seek reimbursement of the costs from SEP. SEP is not precluded from challenging the amount of the costs imposed.

SEP has until June 19th to file papers objecting to the Township's application and the Township has until June 25th to respond to SEP's filing. The Court will hear oral argument at 8:30am on Friday, June 28th at the Morris County Courthouse. I am hopeful that a decision will be rendered following oral argument.

As always, it is a pleasure to represent the Township. If you should have any questions, please give me a call.

Tony

Murphy McKeon P.C.

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JUN 13 2013

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HON. DONALD S. COBURN
J.S.C. ret. 1/2 on recall
MORRIS COUNTY

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JUN 12 2013

HON. DONALD S. COBURN
J.S.C. ret. 1/2 on recall
MORRIS COUNTY

DEBORAH O'BRIEN and JAMES STOLTZ,

Plaintiff(s),

vs.

STRATEGIC ENVIRONMENTAL PARTNERS,
LLC, RICHARD BERNARDI and
MARILYN BERNARDI, et al.

Defendant(s).

vs.

STATE OF NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL OF PROTECTION,
TOWNSHIP OF ROXBURY, POETS PEAK,
L.L.C., ROXBURY ASSOCIATES, BUKIET
BUILDING and MANAGEMENT COMPANY and
JOSEPH BUKIET,

Third-Party Defendant(s)

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY
DOCKET NO.:MRS-L-1385-13; MRS-L-1100-13

ORDER TO SHOW CAUSE

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ORDERED that Defendants, Strategic Environmental Partners, LLC, Richard Bernardi and Marilyn Bernardi appear and show cause on the 29th day of June, 2013 before the Donald S. Coburn, J.S.C. at the Morris County Courthouse, located at Washington & Court Streets, Morristown, New Jersey at 9:30 a.m. ~~nine o'clock~~ in the forenoon, or as soon thereafter as counsel may be heard, why judgment should not be entered providing the following relief:

1. The DEP shall be given immediate access by Defendants to the Fenimore Landfill site ("Site"), located at Lot 1, Block 7404 on the Tax Map of Roxbury Township, in order for the DEP to take measures to alleviate the emissions of hydrogen sulfide gas (H₂S) from the Site. Such measures may include, but shall not be limited to:

A. Application of the topical material "Posi-Shell" on all areas of the Site from which H₂S gas emissions are currently emanating;

B. Installation of a geomembrane cap with vegetative surface cover;

C. Installation of a landfill gas management system which may include – but is not limited to – one or more of the following measures: i) gas well collection system; ii) portable skid-mounted blower and flare systems; iii) power/fuel system for the portable skid-mounted blower and flare system; iv) H₂S gas scrubber; v) gas migration trench; vi) soil gas probes;

D. Stormwater management and run-off controls.

2. Posi-Shell shall be applied as necessary to mitigate/alleviate H₂S emissions from the Site until such time as more permanent and long-term H₂S controls are put into place.

3. All costs incurred by the DEP to affect both short- and long-term H₂S controls at the Site shall constitute a lien against the property in the favor of the State, but shall not preclude the State from seeking reimbursement of such costs pursuant to any applicable statutes and law, nor shall Defendants be precluded under applicable law from challenging any costs incurred for the purposes of establishing the amount of the lien.

4. Unless otherwise modified by the Court or by mutual written agreement of the parties, DEP's access to the Site for the purposes of this Order shall be continuous. Defendants and their representatives are permanently enjoined from engaging in any activity or taking any action which would impede DEP's

access to the site or interfere with the DEP and any contractors hired by DEP to implement odor controls on-Site as described herein.; and

5. The Township of Roxbury Department of Health and its contractors shall be given access to the site to monitor the remediation actions being taken and to obtain test samples for the purpose of environmental monitoring.

IT IS FURTHER ORDERED, that a copy of this Order to Show Cause, and all supporting documents submitted herewith, shall be served upon Counsel for the Defendants within 1 days of the date hereof and Defendants shall file and serve any opposition to this Order to Show Cause and the relief requested by June 19, 2013. The Township of Roxbury and the NJDEP shall file and serve any written reply to Defendants' opposition to this Order, by June 25, 2013.

IT IS FURTHER ORDERED, that the Court will entertain argument, but not testimony, on the return date of the Order to Show Cause, ~~unless the Court and parties are advised to the contrary no later than _____ days before the return date.~~



Donald S. Coburn, J.S.C. t/a ret.

Signed June 13, 2013