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Department of Environmental Protection
John Regan
627 Main St
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Subject: Nuisance Conditions - E.L. Harvey & Sons, Permit Modification

June 14, 2004

Dear John Regan;

I bring to your attention the unrelenting nuisance condition caused by the malodor at the E.L. Harvey & Sons (ELH) solid waste facility in Westborough and Hopkinton, MA. For at least eight straight years, residents have complained hundreds of times to various authorities (including the operator) about the awful odors emanating from the ELH facility. Many are often forced to keep their windows closed and stay inside to avoid the odor. I respectfully request you utilize the pending permit modification to incorporate meaningful measures and remedy this relentless dilemma.

The attached references (A, B, C, D) illustrate various documentation in the media, referring to hundreds of resident odor complaints and BOH and Planning board comments; even the operator recognizes his issue from 1997 (see Waste Age Article). This sample of articles illustrates the long history of malodor impacting the residents.

I recognize local Boards of health have broad authority under state law to investigate and control nuisance conditions. They and other local government agencies are empowered by 310 CMR 7.52 to take enforcement action against violators of DEP's noise, odor and dust regulations (310 CMR 7.09-7.10). Unfortunately our boards are challenged by the vast complexity of the ELH operation, compounded by split over-sight in two separate town boards. Each has made an effort, but has yet to carry out effective control and enforcement. I urge you to proactively offer DEP guidance to our town(s).

The Westborough BOH has visited with many residents to explain years of ineffective measures including "misting", spraying of trucks, new chemicals, adjustments of chemicals, timing of garbage loads, automated doors (normally remaining open at ELH), redirection of loads, and single truck related loads; but, the obnoxious odors continue. I have also witnessed the various so called "misting" mitigation measures in use while at the same time experiencing the odor from several hundred feet away. At almost anytime during the year, these odors permeate deep into our community.

The Board(s) of Health needs your immediate help to put a stop to this public nuisance. Our patience awaiting empty promises of mitigation can no longer be tolerated. Enjoyment of our property is negatively impacted and concern is mounting about the impact to health. None are assured of the long term affect of these odors on our families.

Your definition of Air Pollution in 310 CMR 7.00 fits this nuisance condition "AIR POLLUTION means the presence in the ambient air space of one or more air contaminants or combinations thereof in such concentrations and of such duration as to:

(a) **cause a nuisance**; (emphasis added), (b) be injurious, or be on the basis of current information, **potentially injurious to human or animal life, to vegetation, or to property**; or (emphasis added), (c) **unreasonably interfere with the comfortable enjoyment of life and property** (emphasis added) or the conduct of business."

Please also be aware that it is very common to witness large 50 foot trailers loaded with garbage waiting processing overnight and through the weekend. Many are located outside, behind the #3 processing building, near the open composting area (itself another possible source of odor). This facility should not be allowed to store any waste overnight. Why is there not a condition on this permit requiring 100% onsite solid waste processed each day? No waste should be stored overnight. My research indicates this is a type of condition placed on such facilities.

There are also at least three landfills located in both Westborough and Hopkinton that do not have any gas venting fixtures, some have been destroyed. Landfills typically incorporate a network of these devices to allow measured gas releases.

While I understand new monitoring plans are imminent, could this also be the factor in the malodor? What risk have we been exposed to by the lack of these fixtures?

Also pertinent to this nuisance condition is the recent DEP memo to ELH (May 24, 2004) which point out additional emission related problems at the site from C&D dust and diesel fumes. I greatly appreciate and thank the DEP for its intent to resolve the series problems with emissions from this facility.

It is interesting to note two common themes pervade this issue: 1. the ELH facility continues to negatively affect the residents who are confronted with a serious degradation in quality of life and health concerns and 2. DEP regulations, among others, prohibit this nuisance conditions.

As you know, solid waste facilities are prohibited from creation of nuisances. According to 310 CMR 16.40 (4)(g), "Potential for the Creation of Nuisances. No site shall be determined to be suitable or be assigned as a solid waste management facility where the establishment or operation of the facility would result in nuisance conditions which would constitute a danger to the public health, safety or the environment taking into consideration the following factors:

1. noise, **2. litter**; 3. vermin such as rodents and insects; **4. odors**; 5. bird hazards to air traffic; and 6. other nuisance problems."(emphasis added)

Also, the site's odor problems have an adverse impact on the conservation lands directly adjacent and owned by homeowners of the Piccadilly Mill Open Space Trust. Again according to 310 CMR 16.40 (4)(e), "Protection of Open Space. No site shall be determined to be suitable or be assigned as a solid waste management facility where such siting would have an adverse impact on the physical of, or on the use and enjoyment of: 1. state forests; 2. state or municipal parklands or conservation land, or other open space held for natural resource purposes in accordance with article 97 of the Massachusetts Constitution;

3. MDC reservations; **4. lands with conservation, preservation, agricultural, or watershed protection restrictions approved by the Secretary for the Executive Office of Environmental Affairs; or** (emphasis added) 5. conservation land owned by private non-profit land conservation organizations and open to the public".

Local homeowners are angered at the lack of definitive action taken by the state agency and local government. At what point will the hundreds of complaints be adequately addressed? State regulations prohibit these malodors and provide a venue of enforcement. Please exercise your department's powers and put a stop to this unhealthy and unlivable condition. Incorporate meaningful conditions or halt certain types of operations and end this public nuisance.

Respectfully,

Paul A. Graham

Cc:

Westborough Board of Health, Paul McNulty
Westborough Conservation Commission, Ed Brady
Westborough Planning Board, Edward Newton, Jr.
Hopkinton Board of Health, Nancy Peters
Hopkinton Zoning Board of Appeals, Wayne Davies
Hopkinton Conservation Commission, Brian Morrison
Hopkinton Planning Board, John Coolidge
Martin Suuberg, DEP Director
Tom Cusson, DEP Air Quality
Leigh Emery, Westborough Board of Selectmen
Mary Pratt, Hopkinton Board of Selectmen
Elena Pucciarelli, Trustee - PMOST

EXHIBITS A, B, C, D

Odor Articles, E.L. Harvey & Sons, Westborough & Hopkinton, MA

Exhibit A. Waste Age Website, News Article, April 1, 1998, www.Wasteage.com

....E. L. Harvey & Sons Inc. operates a 22,000-square-foot transfer station in Westboro, Mass. According to owner Steve Harvey, the facility operated without problems for years, thanks to a location far away from other developments.

"We had no waste restrictions," he says. "We could take anything that people wanted to send through."

The station produced some odors, especially on hot summer days, but the remote location prevented the odor from becoming a business problem.

Then, a developer bought the adjoining land and erected townhouses. During the summer of 1997, odor from the transfer station wafted above the plant and drifted away. Soon, complaints drifted back.

"When the plans for the development were first made public, we realized we might have a problem and began planning to handle it," Harvey says.

That fall, Harvey installed a spray odor control system manufactured by Nutech Environmental Corp., Denver. "The system uses chemicals to neutralize odors instead of masking them," Harvey explains. "We chose our system by asking for two bids and deciding purely on the cost of the neutralizing chemical.

"We can mix the chemical in concentrations of 500 to one," he continues. "With [such] lower concentration chemicals, it is practical and economical for us to run the system constantly during the summer when the problem comes up."

In addition to the odor control system, Harvey also has decided to divert particularly smelly wastes to an incinerator or to a landfill.

While Harvey has yet to use the odor control system - this year will be the first summer since the installation - he says he is confident that the neutralizing chemicals along with the diversion strategy will satisfy his new neighbors....

Exhibit B. Westborough Board of Health, Aug 2002

....The Board of Health has received numerous complaints of garbage odors this summer from residents who live near E. L. Harvey & Sons. The facility has installed an odor counter-acting system, but the odors continue to persist. Harvey's has also hired two or three odor-control contractors to solve the problem. Many of the residents and abutters have become very vocal and want the transfer station declared a public nuisance. They have organized to stop the proposed recycling plant expansion at Harvey's. The facility would affect 40 acres in Hopkinton and 10 acres in Westborough.

Director McNulty believes that the garbage odors may be emanating from the trash-haulers trucks as they arrive and depart from Harvey's. The hot, humid weather at this time of the year only makes the odors worse. It's very hard to eliminate the odor in this summer weather. E. L. Harvey & Sons is a private, commercial transfer station that accepts recyclables and trash from other haulers from several areas around the state. Consequently, there is considerable truck traffic. The Board of Health has responded to the complaints and Harvey's has been very cooperative. Director McNulty will talk to Town Counsel.

Exhibit C. Hopkinton Planning Board Newsletter – October 2002

http://www.hopkinton.org/government/planning/newsletter/october_02.htm

...Criteria (g) is relative to the potential for the creation of nuisances. Two of the potential areas of concern to the Board are litter and odors. The existing facility in Westborough is a source of odor, despite the assertion in the EIR that equipment has been successfully installed to mitigate this. It is still a problem, and probably impacts the ability of residents and others in the area to enjoy being out of doors. The Board is very concerned about the odors from facility and its impact on the surrounding area. The Board is also concerned about litter. The amount of litter in the area from the existing site is a continuous problem. The applicant indicates there are litter patrols, but these must be more frequent in order to resolve the problem. Litter should be cleaned up around the area and along Wood St. at least once a week....

Exhibit D. Expensive efforts to control smell at E L Harvey's - Aug 2003

By Catie Foertsch, Community Reporter Westborough, (partial article)

Westborough - Garbage smells, and in the summertime heat it stinks. Historically, reeking trash at the town dump was a fact of life during the hot summer months, but over the last several years, in response to neighbor complaints, E L Harvey's has invested hundreds of thousands of dollars in odor control systems to prevent the piquant smell of rotting garbage from perfuming local neighborhoods. Stephen Harvey, E L Harvey's vice president of installations, estimated that 90 percent of the odor problem has been solved.

"I don't know if we can get rid of the last 10 percent," he said, "but we're working on it."

Director of Public Health Paul R. McNulty has been working with Harvey's to try and solve the odor problem. McNulty receives complaints about the smell at Harvey's, and tries to track down the source.

Last year was a particularly bad year, McNulty said, because of the long, hot summer. The average number of complaints over the prior four years was 36, while last year 104 complaints were received, 41 in August alone. (So far this year there have been 21 complaints.)

Harvey contended that some of the complaints were related to his company's expansion project, which was vigorously opposed by neighbors.

"We never had so many complaints until we filed for a permit with the Hopkinton Board of Health," Harvey said.

Most complaints have come from residents on Morse Street, Belknap Street, and Piccadilly Way, and from a resident who lives on Hopkinton Road across from Harvey's.

About five years ago, Harvey's installed an odor neutralizing system that allows employees to spray odor neutralizing solution on the garbage in Building Three, where trash is dumped out of dumpsters, pushed into piles, and loaded onto large trucks for transport off-site. The system helped, but not enough. Neighbors were still complaining....

After investigating several complaints, McNulty discovered that while about 60 percent of the smell came from Building Three, about 40 percent was coming from the trucks that pull out of Building Three to take trash to the Millbury incineration facility or other disposal sites. As a result of McNulty's conclusions, the garbage in the trucks is now sprayed before the trucks leave the building. In addition, large automatic doors have been installed on Building Three. The doors close after trucks enter the building to unload their trash, in an effort to keep the smell in the building.....