



TOWN OF PEPPERELL

BOARD OF SELECTMEN

February 14, 2019

Mary Jude Pigsley, Regional Director
Commonwealth of Massachusetts
Department of Environmental Protection
Central Regional Office
8 New Bond Street
Worcester, MA 01606

Re: Mass Composting Group, Inc., 161 Nashua Road Reclamation Project

Dear Regional Director Pigsley:

This letter is in response to a Proposal dated June 28, 2018 from Mass Composting Group, Inc. ("MCGI") to establish a soil reclamation facility at 161 Nashua Road in Pepperell, Massachusetts (the "Project"). MCGI seeks an Administrative Consent Order for the Project from the Massachusetts Department of Environmental Protection ("MassDEP") under MassDEP's Interim Policy for the Re-Use of Soil for Large Reclamation Projects, Policy # COMM-15-01 ("Interim Policy").

Under the Interim Policy:

MassDEP will not finalize an Administrative Consent Order on the proposed quarry, gravel pit or sand pit reclamation project unless and until all comments from such local officials on project impacts related to noise, dust, odor and/or trucks have been appropriately addressed by the project proponent.

The Interim Policy further states:

Nothing in this Interim Policy eliminates, supersedes or otherwise modifies any local, state or federal requirements that apply to the management of soil, including any local, state or federal permits or approvals necessary before placing the soil at the receiving location, including, but not limited to, those related to placement of fill, noise, traffic, dust control, storm water management, wetlands, groundwater or drinking water source protection.

The Board of Selectmen (“Board”) held a public meeting at which MCGI presented its proposed Project on August 20, 2018. Since that time, the Board has received and reviewed MassDEP’s July 28, 2018 Review of Soil Management Plan; a September 7, 2018 Memorandum from Terra Environmental, LLC on behalf of MCGI responding to MassDEP’s July 28, 2018 Memorandum; an October 9, 2018 zoning determination by the Pepperell Building Inspector; an October 19, 2018 letter from the Pepperell Conservation Commission to MCGI; an October 31, 2018 letter from the Pepperell Board of Health (“BOH”); a January 16, 2019 Abbreviated Notice of Resource Area Delineation (“ANRAD”) filed with the Pepperell Conservation Commission; and more than 80 letters and emails from Pepperell residents opposed to the Project. The Board is also mindful that the BOH has adopted Fill Importation Regulations requiring a permit from the BOH for projects involving greater than 30,000 cubic yards of fill over the duration of the project.

MCGI indicated in the September 7, 2018 Memorandum from its consultant that further plans and information would be forthcoming to the Town. The Memorandum states on p.10:

MCGI plans to address the following issues in writing to the Town:

1. Provide current and final elevations of fill area.
2. Verify truck routes and provide maps(s) with 2-routes following state roads.
3. Address to the extent applicable project noise, dust, and odors (i.e. nuisance concerns) by providing more information.
4. Provide a plan for communicating with the public and interested parties during the project.
5. What will this project do for Pepperell?
6. Provide more details regarding the “donor” sites.

More than five months have passed since MCGI’s September 7, 2018 Memorandum, and, apart from the ANRAD filed with the Conservation Commission, the Board has received no further studies, plans or submissions from MCGI.

At the Board’s public meeting, the Board heard and was mindful of statements received from MCGI, MCGI’s representatives and the comments of the general public.

The Board of Selectmen, on behalf of the Town of Pepperell, voted at its meeting on February 11, 2019 that it does not support the Project, for the reasons set forth below:

1. Noise Impacts

MCGI’s Proposal is silent as to the impacts of noise from the Project. The Proposal is unsupported by any noise study or objective data upon which the Board could conclude that the volume of noise and trucks generated by the transport and operation of a 4 million cubic yard soil reclamation facility over a 7-9 year period will not create a nuisance to residents as a result of noise.

Pursuant to the Interim Policy, the Board finds that impacts related to noise have not been appropriately addressed by MCGI.

2. Dust Impacts

MCGI's Proposal asserts that it will "utilize several best management practices (BMPs) to control fugitive dust and sediment associated with transporting, spreading, and compacting soil to fill the Site including any BMPs that are proposed in the SWPPP [Storm Water Pollution Prevention Plan] and required in the Town of Pepperell Order of Conditions to manage stormwater runoff at the Site." The Proposal then lists several proposed measures proposed to control dust. However, the Proposal is unsupported by any objective, technical data to suggest that the proposed measures will be sufficient to mitigate the dust that will be generated by the intense level of activity and trucks associated with the Project. The Board notes that no SWPPP has been submitted, and MCGI has neither applied for nor obtained an Order of Conditions from the Pepperell Conservation Commission.

Pursuant to the Interim Policy, the Board finds that impacts related to dust have not been appropriately addressed by MCGI.

3. Odor Impacts

MCGI's Proposal states that "Loads not meeting acceptance criteria at the time of delivery to the project site due to debris, odors, or other nonconformance with Acceptance Criteria will be rejected prior to off-loading or reloaded immediately by the facility operator." It further asserts that soils "will not contain nuisance odors." However, the Proposal is unsupported by any objective technical data to suggest that the proposed measures will be sufficient to control any odors associated with vast quantities of soil received in connection with the Project. The Board further notes that the Proposal fails to address how MCGI will mitigate the odors and exhaust fumes from the large number of trucks traveling to and from the site.

Pursuant to the Interim Policy, the Board finds that impacts related to odor have not been appropriately addressed by MCGI.

4. Truck Impacts

MCGI's Proposal is silent as to the impacts of trucks from the Project. The Proposal is unsupported by any traffic study, noise study or objective data upon which the Board could conclude that the volume of trucks generated by the transport and operation of a 4 million cubic yard soil reclamation facility over a 7-9 year period will not create a nuisance to residents as a result of truck impacts. The Proposal also fails to provide any mechanism for monitoring and repairing damage to Town roads caused by trucks travelling to and from the site.

Pursuant to the Interim Policy, the Board finds that impacts related to trucks have not been appropriately addressed by MCGI.

5. Failure to Comply with the Zoning Bylaw

The Board is mindful that the Building Inspector determined by letter dated October 9, 2018 that the Project is a prohibited “Commercial Dumping Ground” under the Pepperell Zoning Bylaw, and that the Zoning Board of Appeals (“ZBA”) voted on January 16, 2019 to overturn that determination and issued a Decision to that effect filed with the Town Clerk on January 30, 2019. The Board respectfully disagrees with the ZBA’s Decision and supports the determination of the Building Inspector.

The Board further notes that, notwithstanding whether the Project is a “Commercial Dumping Ground,” MCGI has not requested or obtained a determination from the Building Inspector that a Soil Reclamation Facility is an allowed use under the Pepperell Zoning Bylaw. The Board notes that a Soil Reclamation Facility is not included in the Zoning Bylaw Table of Uses, and that under Section 3100, any use “not herein expressly permitted is hereby prohibited.” As a result and pursuant to the Interim Policy, the Board cannot conclude, on the basis of the information provided by MCGI to date, that the Project complies with the Zoning Bylaw.

6. Failure to Obtain Wetlands Permit

On October 19, 2018, the Conservation Commission sent a letter to MCGI stating its concerns “over the need for an updated SMP [Soil Management Plan] and plans that have the detail necessary to evaluate the Project, rather than conceptual plans based on MA GIS data layers.” The Commission noted that the conceptual plans “do not provide the level of detail necessary to determine the proximity of work and potential impacts to wetland resource areas including the Nashua River, floodplain areas, and rare species habitats.”

On January 16, 2019, MCGI filed an ANRAD with the Conservation Commission. MCGI has not otherwise addressed the concerns noted by the Commission on October 19, 2018 or submitted an updated SMP and plans. Although the Proposal contemplates an Order of Conditions from the Commission, MCGI has neither applied for nor obtained an Order of Conditions from the Commission.

As a result and pursuant to the Interim Policy, the Board finds that on the basis of the information provided by MCGI to date, MCGI has not obtained an Order of Conditions from the Conservation Commission, and the Proposal does not demonstrate compliance with the Wetlands Protection Act, G.L. c. 131, § 40 and the Pepperell Wetland Protection Bylaw.

7. Failure to Obtain Board of Health Permit

On October 31, 2018, the BOH provided written input to this Board outlining some of its concerns regarding MCGI’s Proposal. Among the concerns raised by the BOH, and not addressed by MCGI to date, is the proximity of the proposed Project to the Nashua Road Public Water Supply, which is hydro-logically up-gradient from the Project site. The

Board is also aware that the BOH has adopted Fill Importation Regulations. Under the regulations, MCGI must obtain a permit from the BOH for the Project. MCGI has not addressed the BOH's concerns, and it has neither applied for nor obtained a permit from the BOH.

As a result and pursuant to the Interim Policy, the Board finds that on the basis of the information submitted by MCGI to date, MCGI has not obtained a permit from the BOH, and the Proposal does not demonstrate compliance with the Pepperell Fill Importation Regulations.

In general, the Board finds that the Proposal does not promote and protect the health, safety and welfare of the Town or its residents. Accordingly, and for the reasons set forth above, the Board of Selectmen, on behalf of the Town of Pepperell, does not support the Proposal from Mass Composting Group, Inc. to establish a soil reclamation facility at 161 Nashua Road in Pepperell.

Very truly yours,



Roland P. Nutter, Chair
Board of Selectmen



William Greathead, Member
Board of Selectmen



Lisa Ferolito, Clerk
Board of Selectmen

cc: Town Administrator
Board of Health
Conservation Department
Building Department
Hon. Edward J. Kennedy
Hon. Sheila C. Harrington
David K. McCay, Esq.
Mass Composting Group, Inc.