



## Town of Pepperell Board of Selectmen

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December 9, 2019

William Scott, Jr.  
Mass Composting Group, Inc.  
161 Nashua Road  
Pepperell, MA 01463

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

Dear Mr. Scott:

This is a response to your letter dated October 24, 2019, related to Mass Composting Group, Inc.'s ("MCGI") proposed soil reclamation facility at 161 Nashua Road in Pepperell, Massachusetts (the "Proposal"). Your letter suggests MCGI has sufficiently addressed "several times in the past" the various issues that the Town of Pepperell and its residents have raised concerning the Proposal. Unfortunately, this suggestion is not accurate, and your letter presents little or no new information that would alleviate the Town's longstanding concerns or suggest that "MCGI has taken all reasonable and appropriate steps to be a good neighbor to the residents of Pepperell."

On August 20, 2018, the Board of Selectmen invited MCGI to present its proposed Proposal at a public forum. Town residents and officials posed approximately 169 questions to MCGI. About 56 of those questions were answered. MCGI's counsel promised to sit down with the Town and discuss any remaining issues. That meeting has not occurred. MCGI's counsel promised to meet with the Nashua River Watershed Association, which is also opposed to the Proposal. That meeting also has not occurred. MCGI promised to make its PowerPoint presentation from the forum available to the Town. That too has never happened.

A year after the August 2018 public forum, Mr. Scott and Mr. Peterson from TERRA (MCGI's Licensed Site Professional or "LSP") attended a meeting with a number of Town Officials. At that meeting, MCGI was presented with research that demonstrated numerous compliance issues at the soil reclamation facilities operating under a Massachusetts Department of Environmental Protection ("MassDEP") Administrative Consent Order. In some cases, those violations were egregious. When Mr. Peterson was asked if he knew of any compliance issues at the Groveland site (where he is the LSP), he responded "no." Selectwoman Scarsdale then produced two penalty letters issued by MassDEP for the Groveland site. Mr. Peterson claimed those penalties were being appealed when in fact they had already been paid.

These experiences give the Board no confidence in MCGI's or TERRA's management of any soil reclamation facility in the Town of Pepperell.

The Board previously outlined its concerns regarding the Proposal in its letters to MassDEP on February 14, 2019, and again on April 29, 2019. These concerns included, and the Board's concerns remain:

### **1. Noise Impacts**

Your letter states that all vehicles and equipment will meet state and federal inspections, licensing and noise requirements. This statement fails to meet the substance of the Town's noise related concerns, or address the near certainty that MCGI's vehicles and equipment will be a daily nuisance to Town residents. Even vehicles and equipment that comply with federal, state regulations can be a nuisance. MCGI's Proposal, Revised Proposal, and your letter continue to be unsupported by any noise study or objective data upon which the Board could conclude that the volume of trucks and truck-related noise generated by the transport and operation of a 3.2 million cubic yard soil reclamation facility over a 7-9 year period will not create a nuisance to residents and the Town as a result of noise.

### **2. Dust Impacts**

MCGI's Proposal, Revised Proposal, and your letter assert that MCGI 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 Storm Water Pollution Prevention Plan (SWPPP)." Again, your letter is unsupported by any objective, technical data to suggest that these proposed measures will be sufficient to mitigate the dust that will be generated by the intense level of activity and trucks associated with the Proposal.

### **3. Odor Impacts**

The same is true with respect to odor impacts. Your letter, like the Proposal and Revised Proposal, is unsupported by any objective, technical data showing that the proposed measures will be sufficient to control any odors associated with vast quantities of soil received in connection with the Proposal. As indicated previously, MCGI fails to address how it will mitigate the odors and exhaust fumes from the large number of trucks traveling to and from the site and while idling on site.

### **4. Truck Impacts**

Your letter, like the Proposal and Revised Proposal, remains silent as to the impacts of trucks from the proposed proposal. At the August 2018 meeting, Phil Peterson suggested 8-10 trucks, per hour, for the duration of the proposal. As stated above, MCGI has provided no 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 3.2 million cubic yard soil reclamation facility over a 7-9 year period will not create a nuisance to residents and the Town as a result of truck impacts. MCGI's willingness "to discuss a potential road bond" suggests only the possibility of a mechanism for monitoring and repairing damage to Town roads. Your letter does not actually offer or provide such a mechanism or ensure that the trucks will not be a nuisance to Town residents.

## 5. Failure to Comply with the Zoning Bylaw

As you are aware, the Board disagrees with your assessment that the Proposal complies with the Zoning Bylaw, and in particular whether the Proposal is a “Commercial Dumping Ground.” That issue is now before the Land Court.

The Board further rejects the very assumptions underlying MCGI’s suggestion of zoning compliance. The Proposal is not a “restoration” of a former quarry, and MCGI has offered no evidence suggesting the massive importation of soils proposed is necessary to either reclaim or restore the site, or to “prepare the site for potential future use.” The Town rejects the implicit suggestion by MCGI that the creation of an entire hill of unwanted and potentially contaminated soils to an elevation of 299.5 feet, which is about 100 feet above the current topography and far greater than any existing historical topographic survey shows ever existed in the site, is somehow necessary to restore or develop the property, including for any contemplated solar proposal. Respectfully, the Soil Reclamation is the development proposed, not some means to another end.

## 6. Failure to Obtain Wetlands Permit

MCGI asserts that “no Order of Conditions is required for the Project.” This assertion is inaccurate, or at a minimum, unsupported. It is also contrary to the Soil Management Plan in MCGI’s original proposal, which plainly contemplated an Order of Conditions for the Project stating:

The Project 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 and required in the Town of Pepperell Order of Conditions to manage storm water runoff at the Site.**

See Soil Management Plan, June 29, 2019, § 5.1 (emphasis added).

From the beginning, the Town and the Conservation Commission have requested detailed engineering plans for the proposal so that its wetland impacts could be determined. 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 Proposal, rather than conceptual plans based on MA GIS data layers.” The Commission further 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.”

Although MCGI filed an Abbreviated Notice of Resource Area Delineation with the Conservation Commission on January 16, 2019, it has not filed a Notice of Intent. To date, MCGI has failed to provide the necessary information to determine the proposal’s wetland impacts. As a result, the Board of Selectmen can accept neither MCGI’s suggestion that it has addressed the Town’s concerns nor MCGI’s statement that no Order of Conditions is required. On the basis of the information provided by MCGI to date, MCGI has not demonstrated 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

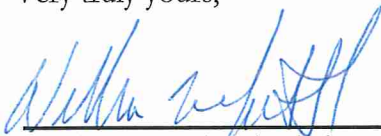
Your letter asserts that no Board of Health permit is required because the Planning Board endorsed the ANR Plan on October 29, 2018. However, the legal basis for this assertion is conspicuously absent from your letter. The Board is aware of no reason that the Board of Health's Fill Importation Regulations do not apply to the Proposal. Furthermore, MassDEP's Interim Policy (Policy # COMM-15-01) explicitly does not "eliminate[], supersede[] or otherwise[] modify 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 soil at the receiving location." Plainly, the Proposal requires a Fill Importation Permit from the Board of Health.

As stated previously, the Board finds that the Revised Proposal for a Soil Reclamation Facility does not promote and protect the health, safety and welfare of the Town of Pepperell or its residents. Accordingly, the Board of Selectmen, on behalf of the Town, cannot and does not support MCGI's proposed Proposal.

As Special Town Counsel has related to MCGI through its counsel on multiple occasions, the Town has no objection and would welcome a collaboration with you on a productive use of the Property.

The Selectmen are further amenable to working with MCGI to secure from Town Meeting any zoning amendments that may be necessary for another, more appropriate use of the Property. The Board would welcome such a dialogue with you.

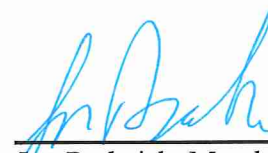
Very truly yours,



William Greathead, Chair  
Board of Selectmen



Margaret Scarsdale, Clerk  
Board of Selectmen



Joe Radwich, Member  
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.  
Mary Jude Pigsley, Regional Director, MassDEP, Central Region