#### Ware Board of Health Meeting Minutes

August 31, 2022 / Selectmen's Meeting Room

Present: John Desmond, Katrina Velle, Jennifer McMartin

In Attendance: Andrea Crete, Betty Barlow, Judy Metcalf, Stuart Beckley & attached list John called the meeting to order at 6:05 PM and announced the meeting is being audio recorded by BoH and video recorded by WCTV

#### **APPOINTMENT**

Republic Services regarding complaints received and possible revocation of their permit to operate in the town of Ware. Andrea informed the board that in early summer we started to receive complaints about residents' trash not being picked up at scheduled time by Republic Services. We never received notification from Republic regarding this and why this was happening. It was difficult for the office to find a good contact telephone number or email because only number they provided on their license application was for their answering service and not local and we were not able to talk to someone to address this problem. Eventually we were able to get a contact email for communication. Additionally we have also received 2 complaints regarding trash being picked up at 3:00 am. Andrea does not want this to continue going forward because trash not being picked up can create a public health hazard and nuisance with overflowing trash cans & dumpsters, creating odor issues & attracting wildlife, rodents. We can't force trash pick up but we do license trash haulers in Ware annually. Republic Services were notified of this meeting and it was Andrea's understanding that they would have a representative present for this meeting however nobody is here at this time. John put this discussion in abeyance pending arrival of a Republic Service representative to a later time at this meeting.

Andrea informed board that DCR asked to move their request for emergency beaver trapping at Peppermill Pond to next Board of Health meeting. Andrea sent board members information on beavers, trapping & what constitutes an emergency. (see attached) Cathy Cascio talked about previous beaver issues handled between Selectmen and Conservation where roads have been washed out. Andrea informed her of the trapping season and how people can hire licensed trappers. Outside of the trapping season residents can request emergency permits through the Board of Health if it meets the requirements. Judy stated the issue with this in Cathy's neighborhood is that the state Division of Fisheries and Wildlife owns the property and does not allow trapping on that property.

Neil Jackson of J&P Engineering Services is present to represent owner Michael Barry to request a local upgrade at 50 Crescent Street. Septic plans are designed by Paul Campagna/Neil Jackson and request is for a 1-foot reduction in separation between the SAS and high groundwater, a 10 mpi perc rate and a 3-foot depth to groundwater due to grading restraints. John motioned to approve the local upgrade request, Jennifer seconded, all in favor.

#### **DISCUSSION/ACTION**

Andrea reached out to DPH regarding local boards of health processing plumbing permits and if this is required and DPH responded saying it is not required for Board of Health to process plumbing permits. They then referred her to the State Plumbing Board which responded saying they are unaware of any legal authority for a local board of health to have any role in processing plumbing permits. If we have a special legislation allowing such an arrangement, please refer to

that. Otherwise note that per M.G.L c. 142 section 11 and 248 CMR 3.05(1)(a)(2), the function of issuing plumbing permits and related inspections falls to an inspector who must be a licensed plumber. They are unable to provide any legal advice so they recommend we review these matters with our town counsel. Andrea states that she knows the Building Department is onboard with taking on that responsibility and that it would streamline their process along with electrical, gas and other building permits. The only formality would be the stipend paid to plumbing inspectors from the Board of Health budget and according to her discussion with Town Accountant an article can be added to STM warrant to move the funds from Board of Health to Building Department but for now we could relinquish the responsibility to the Building Department for processing but this would require the boards vote. Jennifer motioned to allow Building Department to be in charge of processing the plumbing permits, Katrina seconded, all in favor.

John stated he will give a little background on of the application for site modification at ReSource Waste located at 198 East Street Ware, state where he thinks we are, open this for discussion then the board can decide on that. We then have quite a few other issues to deal with concerning this modification such as administrative hearing, traffic review, air emissions/noise peer review and hearing officer. He started the facility is presently permitted for 750 tons day and modification is to expand that to 1400 tons is equivalent to 3 million pounds which will bring many issues including noise, air pollution & truck traffic. He feels at 1400 tons day, 15 tons per truck and operating from 6am to 6pm there would be a truck entering or leaving facility every 4 minutes, creating much more traffic. With this application the Board of Health will need to have legal representation to review and represent at the hearing. The Board of Health received letter from Christopher Hays Wojcik Mavricos stating they would represent the board with principal person being Dave Wojcik, a former Ware resident, was town counsel almost 40 years and has represented the board in the 3 previous hearings for the same property. He then showed everyone 1 box of documents from the last public hearing and states there are 4 or 5 more boxes from the last hearing, a stack of exhibits, transcripts and many more boxes from prior hearings in storage which Dave Wojcik is already familiar with from previous hearings so he does not need time to review for this next hearing therefore not charging the town for this process. John feels that someone new to represent the board would then need to review all of this information therefore charging the town for the time to do so. The Board of Health approved hiring Christopher Hays Wojcik and Mavricos to represent them however the Board of Selectmen's override under the town charter requires the use of town counsel KP Law to represent the board. John now questions how the Board of Health should move forward either by using current town counsel KP Law or per 310 CMR 30.2 (a)(c)(d) that the Board of Health has the authority to hire counsel and other necessary experts. Questions and comments were taken from those in attendance including current Town Counsel Jeffrey Blake of KP Law. Mr. Blake states that the Board of Selectmen do in fact under the charter have the overriding authority to hire town counsel. Jim Russell of Republican Newspaper questioned if ReSource Waste pays the attorney fee for the site assignment hearing process? Judy responded saying it depends on what the attorney is doing. The Technical Fee part which is what she is getting paid from to help the Board of Health get organized and get all the experts together is paid 100% by ReSource Waste. They will pay 100% of the Peer Review and if attorney pre-reads the application before the hearing. There is also Technical Assistant Fee which is paid 50/50 with town paying 50% which is used for witnesses to be present at the meeting, so if the board wants their experts and engineers that did the peer review to be present at the hearing, give testimony, get cross examined by attorney that is paid 50/50 with town and ReSource. There is a Public Hearing Fee which pays 100% for the Hearing Officer, Stenographer, but not the transcripts unless the Hearing Officer orders the transcripts and can pay for copy fees etc. It will also pay 50% for legal council on behalf of the town to be present. The Board listened to many comments and concerns of people present. Katrina stated having the economics of this. David Wojcik having already reviewed all the boxes of previous hearing information and documents might save the town some money however this property comes up a lot and if David is already

retired, if this comes up again it might be useful to have someone new that we can turn to next time something comes up with this property. John states that from the conversation in this room tonight it appears to be clear that the Selectmen do in fact have authority over hiring council so it appears the attorney the Board of Health will have for the hearing process will be Jeffrey Blake of KP Law so we need to get behind him to look out for the health, safety and environment of the town. Jennifer also wanted to make it clear that the Board of Health does not have an opinion of whether we want this to go through or not.

Judy provided the board with a proposal from TECH Environmental for air & noise pollution. There are only 2 companies in MA that are experts in air emissions which is Epsilon and TECH and ReSource Ware hired Epsilon so that leaves us with TECH Environmental. The first part of this is peer review of application of air quality impact assessment which is \$9,400.00 for peer review which is 100% from Technical Fees. The second part is they anticipate there being questions for Epsilon at the hearing which will be \$5,400.00 and if Board or Hearing Officer wants their principal person Mark to attend to be a witness his hourly rate is \$280.00/hour. This portion is 50/50. Jennifer makes a motion to use TECH Environmental Inc as set forth in letter of August 12, 2022, Katrina seconded, all in favor. John Signed the proposal for TECH Environmental.

Judy provided board with first work-product draft from HSH Howard Stein & Hudson of their Peer Review Report. They identified 2 items they want more information on, a) Main Street Improvement Project future capacity and b) construction impacts. Judy also had a couple questions including:

- A. Along both the 70% and 30% volume routes, does the study adequately identify road / bridge projects anticipated over next few years. Are impacts to routes listed? Are alternative routes contemplated or proposed?
- B. Street Sweeping / Catch basin cleanings waste -is enough detail provided in the traffic study? Such as tonnage, truck types, # of truck trips, place of origin/ routes.
- C. School bus routes and bus stops location identified.
- D. Updated accident data along route in Ware provided? Is it appropriate to ask for accident data for West Main Brookfield (rural section leading into Ware)

Judy updated the board regarding a hearing officer. The previous hearing office Wayne LeBlanc has retired, we received a recommendation from Tom Speight of DEP, ReSource Waste attorney has made a recommendation of John Shea and Judy has received the name of Arthur Krieger who has done a number of these and is town counsel for 1 town and special town counsel for a number of towns. She has spoke with him and he will submit his proposal. Town Counsel Jeffrey Blake states that he has worked with both John Shea and Arthur Krieger and feels either of them would be a good hearing officer. Judy reminded board that the hearing officer is 100% from the hearing fees. She stated ReSource Ware does want the stenographer and transcript. The Technical Experts will be 50/50 and unfortunately the boards FY23 budget did not plan for this so she is not sure how this will be handled. DEP says they will issue their site suitability by October 17, 2022 which means the Board of Health has to have a public hearing with first hearing being within 30 days which also requires a 21 days public notice of the public hearing and the local Ware River News publishes once a week. Judy asked board to think about what day around November 17<sup>th</sup>.

Stuart mentioned due to town elections and the acoustics in the grand hall of Ware Town Hall he suggests finding an alternative place to hold the public hearing and Nancy Talbot suggested doing an application for either Ware High School or Middle School auditorium and she believes the elementary school would not be suitable. She does recommend the high school with better lighting, acoustics, seating and parking.

Judy talked about the recent DEP non-compliance notices and extension of time to install their fire suppression system (see docs attached)

Andrea informed the board of recent complaints regarding trash accumulation at 62 Church Street. Owner on record has passed away and people are living there which have told staff that they are not going to do anything with the trash. At a recent Ware code enforcement meeting Andrea, the Building Commissioner DPW Director, Fire & Police Chief, Town Planner and Stewart met with the Attorney General's office to discuss properties dealing with code violations and the AG did a presentation on their receivership program. With this program the court appoints a receiver (experienced contractor) to bring the property up to code then property owner has option to pay receiver for work or sell property to receiver. This program is something everyone in attendance agreed could be another resource they could use to try to achieve compliance with the properties that are either vacant and/or abandoned. They will be meeting at this property Friday but in regard to the clean and lien it needs the trash issue needs to be taken care of immediately due to the significant amount of trash. Numerous quotes were given the Health Department with cheapest being AAP Junk Removal Services

Katrina motioned to approved meeting minutes of July 20, 2022, Jennifer seconded, all in favor.

#### **DIRECTORS REPORT**

Andrea updated board on covid 19 numbers, last month Ware had 57 cases with 1 death and this month 55 cases so far. At this point there are no monkey pox cases in Ware. Public Health Nurse Kirsten will be at the Ware senior center on 2<sup>nd</sup> & 4<sup>th</sup> Wednesday of month 10-11:30am for blood pressure readings, checking glucose monitoring, foot health and answering any questions. She will also be doing an emergency preparedness presentation on Wednesday September 14<sup>th</sup> at 11:30am.

Andrea informed board that Bethany Ames is no longer the Contact Tracer as this position was funded through a grant that ended June 30, 2022. Unfortunately, this grant end date was not included in her contract, only that either party can end the contract given 1 week notice which Andrea sent a letter to her with more than 1 week notice that her end date would be August 31, 2022, so the District is going to have to pay for her hours for July and August. Kirsten is on MAVEN and able to handle any contact tracing.

Republic Services still did not arrive for the meeting and members continued discussing issues and whether their trash collection permit should be revoked and possibly not renewed for 2023. Andrea states she wants them to be able to give notice to their customers so if the Board decides to not renew license for 2023 its needs to be done soon. Customers that contract with Republic are paying 3 months in advance so they need to have time to find other trash haulers if board decides not to renew license. Board members decided to have Andrea send another letter to Republic stating we are not going to renew their license for 2023 without any explanation from them. This letter could also be placed in Ware River News.

John motioned to adjourned at 8:30 PM, Jennifer seconded all in favor. Next meeting to be September 21, 2022 at 6:00PM

Respectfully Submitted, Betty Barlow

Meeting minutes approved 9/21/2022

Name Addrss 95 church St Cathy Cascio JACK CASCIO 67 Pulaski Kim Mongen Rig Kevis Skeger 133 Church St. were River News Parla Ovi mette SPILIFIEL Republica Newspaper I'm Russoll RP Law Town Coursel Jest Blake West Jackson - Brown engineer for 50 Corscent St LUA Nancy Talbet



# Ware Board of Health

Town Hall, Suite – D 126 Main Street Ware, MA 01082

Ph# (413)967-9615 Fx# (413)967-9646

August 16, 2022

Republic Services 845 Burnett Road Chicopee, MA 01020

This office has received another complaint regarding 3:00AM trash pickup by Republic Services in Ware. This is aside from many other complaints received regarding Republic Services not picking up trash as scheduled.

The Board of Health is responsible for licensing Trash Haulers and your permit to operate in the Town of Ware is being put on notice and is in jeopardy of being revoked.

Your attendance at the next Ware Board of Health meeting Wednesday August 31, 2022 at 6:05PM is required. The Board of Health will be discussing these complaints and possible revocation of your permit to operate in the Town of Ware. This meeting will be held at Ware Town Hall, 126 Main Street Ware MA in the Selectmen's Meeting Room.

Sincerely,

Betty Barlow

Administrative Assistant

#### Barlow, Betty

From:

Crete. Andrea

Sent:

Tuesday, August 16, 2022 11:12 AM

To:

dprather@republicservices.com; kturcotte@republicservices.com

Cc:

Barlow, Betty

Subject:

Town of Ware Permit to Operate-Board of Health Meeting

Good morning, this email is to alert Republic Services of another complaint from a very unhappy resident who had trash pick up by Republic at 3AM this morning on Vegeance Street in Ware.

This is the second complaint we have received regarding very early morning trash pick up, aside from all the other complaints regarding not picking up trash as scheduled.

The Board of Health is responsible for licensing trash and septage Haulers and your permit to operate in the Town of Ware is being put on notice and is in jeopardy of being revoked.

Your attendance at the next scheduled Board of Health meeting to discuss the complaints this department has received and the possible revocation of your permit to operate will be discussed.

This meeting is on Wednesday August 31st at 6PM. We will be discussing the situation with Republic at 6:05PM.

We are sending you an official letter with the meeting date and time to appear. We look forward to your attendance and hope to be able to come to a resolution.

If this email is sent to the wrong party, please forward to whom it may concern.

Thank you

Andrea Crete MPH, RS
Director of Public Health
Quabbin Health District
126 Main Street, Ware MA 01082
Office Phone: 413-967-9615

Serving the Towns of Belchertown, Pelham, and Ware

#### **Barlow, Betty**



Crete, Andrea

Tuesday, August 16, 2022 11:36 AM

To: Cc: Callender, Amias Barlow, Betty

Subject:

RE: Town of Ware Permit to Operate- Board of Health Meeting

I'm sorry, I did spell it wrong. It is Vigeant Street.

Thank you

From: Callender, Amias < ACallender@republicservices.com >

Sent: Tuesday, August 16, 2022 11:34 AM
To: Crete, Andrea <acrete@townofware.com>
Cc: Barlow, Betty <BBarlow@townofware.com>

Subject: Town of Ware Permit to Operate-Board of Health Meeting

**CAUTION:** This email originated from outside of the Town of Ware organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

#### Andrea,

I am looking to follow up on a complaint for a 3am pickup this morning. Can you please confirm the spelling is "Vegeance St" as I having trouble locating.

We also will have a representative present for the BOH meeting.

Thank you,

Amias Callender
Operations Manager

845 Burnett Road Chicopee, MA 01020

- e ACallender@republicservices.com
- o (413) 557-6719 c (470) 589-0151
- w RepublicServices.com



We'll handle it from here.



#### Office of

## Ware Board of Health

Town Hall, Suite – D 126 Main Street Ware, MA 01082

Ph# (413)967-9615 Fx# (413)967-9646

June 17, 2022

Republic Services 845 Burnett Road Chicopee, MA 01020

The Board of Health office is receiving numerous complaints from residents that are customers of yours regarding not getting their trash and recyclables picked up from you. We are hearing many complaints of overflowing trash and recycle receptacles throughout the town of Ware. These overflowing receptacles can potentially cause a serious public health issue with rodents, odor and nuisances.

Due to these complaints this office has been trying to reach you at the phone number you have listed as a contact number on your application for a permit to operate in the town of Ware without any success.

Please contact this office immediately so we can resolve this issue. If we do not hear from you we will have no other options than to issue fines and/or revoke your permit to operate in Ware.

Sincerely,

Betty Barlow

Administrative Assistant



#### Office of

## Ware Board of Health

Town Hall, Suite – D 126 Main Street Ware, MA 01082

Ph# (413)967-9615 Fx# (413)967-9646

June 7, 2022

Republic Services 845 Burnett Road Chicopee, MA 01020

This office has received multiple complaints regarding non-pickup from customers in Ware. We have left messages at the phone number listed on your application for a license to operate within Ware and have not heard back. As a business that is licensed by our department it is important we are able to contact someone in your facility to address these concerns. The number we have on file has not been effective in reaching appropriate personnel. We need to discuss these complaints and our inability to communicate with you as soon as possible so that these issues can be resolved.

Please call this office at (413)967-9615 as soon as possible.

Sincerely,

Betty Barlow

Administrative Assistant

#### **Barlow, Betty**

From:

Crete, Andrea

Wednesday, August 31, 2022 12:43 PM

Cc: Subject: Barlow, Betty Beaver Guidance

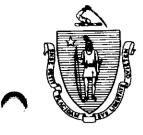
Attachments:

beaver-guidance.pdf

Good afternoon Board of Health, Dept of Conservation and Recreation will not be able to attend our Board meeting tonight to discuss their request for an emergency trapping permit. They have requested to be on the agenda for next months meeting. Since it is on the agenda, I will just discuss what is involved in issuing an emergency trapping permit and see if any of you have any questions. I have attached a quick reading guidance document which goes over the process.

Andrea Crete MPH, RS
Director of Public Health
Quabbin Health District
126 Main Street, Ware MA 01082
Office Phone: 413-967-9615

Serving the Towns of Belchertown, Pelham, and Ware



ARGEO PAUL CELLUCCI GOVERNOR WILLIAM D. O'LEARY SECRETARY HOWARD K. KOH. MD. MPH

COMMISSIONER

# The Commonwealth of Massachusetts Executive Office of Health and Human Services Department of Public Health

250 Washington Street, Boston, MA 02108-4619

February 14, 2001

## Guidance for Boards of Health Implementing M.G.L. c.131, s.80A Threats from Beaver and Muskrat-Related Activities

#### Summary of the Law

The Massachusetts Legislature recently amended M.G.L. c.131, s.80A, with the passage of "An Act Relative to Foothold Traps and Certain Other Devices." This new law became effective on July 21, 2000, and was intended to make it easier for applicants to alleviate threats caused by beaver and muskrat-related flooding.

Any person may apply to the Board of Health (Board) for an emergency permit to immediately alleviate a threat to human health and safety from beaver or muskrat-related activity. The law includes a list of activities, set forth below, that may constitute a threat to human health and safety. The activities in this list are intended to be suggestions about what could constitute a threat, but the determination of whether an activity poses a threat is left to the judgment of the local health officials. If local health officials determine that there is not a threat to public health or safety, this does not mean that the person seeking assistance is without options. With appropriate permits, they can still install water flow devices, breach dams, or trap, under different conditions, which are outlined within the last three paragraphs of MGL c. 131, s. 80A. The person can also appeal the Board's decision to the Massachusetts Department of Public Health (MDPH) or the Division of Fisheries and Wildlife (DF&W) (see page 11).

#### A threat to human health and safety may include:

- (a) beaver or muskrat occupancy of a public water supply;
- (b) beaver or muskrat-caused flooding of drinking water wells, well fields or water pumping stations;
- (c) beaver or muskrat-caused flooding of sewage beds, septic systems or sewage pumping stations;
- (d) beaver or muskrat-caused flooding of a public or private way, driveway, railway or airport runway or taxi-way;
- beaver or muskrat-caused flooding of electrical or gas generation plants or transmission or distribution structures or facilities, telephone or other communications facilities or other public utilities;
- (f) beaver or muskrat-caused flooding affecting the public use of hospitals, emergency clinics, nursing homes, homes for the elderly or fire stations;
- (g) beaver or muskrat-caused flooding affecting hazardous waste sites or facilities, incineration or resource recovery plants or other structures or facilities whereby flooding may result in the release or escape of hazardous or noxious materials or substances;
- (h) the gnawing, chewing, entering, or damage to electrical or gas generation, transmission or distribution equipment, cables, alarm systems or facilities by any beaver or muskrat;

(i) beaver or muskrat-caused flooding or structural instability on property owned by the applicant if such animal problem poses an imminent threat of substantial property damage or income loss, which shall be limited to: (1) flooding of residential, commercial, industrial or commercial buildings or facilities; (2) flooding of or access to commercial agricultural lands which prevents normal agricultural practices from being conducted on such lands; (3) reduction in the production of an agricultural crop caused by flooding or compromised structural stability of commercial agricultural lands; (4) flooding of residential lands in which the municipal board of health, its chair or agent or the state or federal department of health has determined a threat to human health and safety exists. The Department of Environmental Protection shall make any determination of a threat to a public water supply.

If the Board of Health determines that such a threat exists, the Board shall immediately issue an emergency permit to alleviate the threat. The permit is valid for ten consecutive days. If the Board determines that such a threat does not exist, the Board shall immediately deny the permit and specify, in writing, the reasons for the denial. In case of a denial, the Board shall also inform the applicant that he or she can employ one of the following options for resolving their problem: 1) appeal to the state Department of Public Health for a determination as to the existence of the threat; 2) appeal to the DF&W if there is a question as to the cause (i.e., type of wildlife) of the threat; 3) contact DF&W for assistance with solutions covered under the non-health or safety threat section of the law (last three paragraphs of M.G.L. c. 131, s. 80A); or 4) contact a private contractor or non-governmental organization for assistance. MDPH and DF&W have agreed to consult with each other on issues where either agency clearly has more expertise, i.e., DF&W will take the lead on issues requiring wildlife expertise, and MDPH will take the lead on issues requiring public health expertise.

The permit authorizes the applicant to remedy the threat in one of three ways: 1) use of Conibear or box or cage-type traps (subject to DF&W but not Conservation Commission

regulation); 2) breaching of dams, dikes, bogs or berms, subject to determinations and conditions of Conservation Commissions; or 3) use of any non-lethal management or water-flow devices, subject to determinations and conditions of Conservation Commissions (see Sample Permits in Appendix I).

If the applicant has been unable to solve the problem within the 10-day emergency permit period, the applicant, in conjunction with the Board of Health, shall subsequently apply to the DF&W for a 30-day extension permit. While awaiting approval from the DF&W for the 30-day extension permit, the applicant may apply to the Board for two additional tenday emergency permits (see page 9 for guidance on extension permits).

Beaver and muskrat-related problems that are determined not to constitute threats to public health and safety under this new law may still be addressed. DF&W staff, private contractors, and non-governmental organizations specializing in this work, can assist individuals with dam breaching, installation of water control devices, and trapping subject to any necessary permit. Under M.G.L. c. 131, s. 80A, permits to use a Conibear trap can be issued by DF&W if box or cage traps and alternative methods like water control devices have been tried unsuccessfully for 15 days.

#### Making Public Health/Safety Determinations

The Board of Health must make a determination as to whether the applicant has a "threat to human health and safety". The intent of the legislation was to provide a quick remedy to flooding caused by beaver or muskrat. In the law, the permit is termed an "emergency permit". Such terminology is meant to imply that the permit is short lived (i.e., ten days) and will be issued quickly. The term "emergency" is NOT meant to imply that the applicant has a public health or safety emergency. The "emergency permit" is issued by the Board of Health to solve a "public health or safety threat". As defined under Chapter 131, Section 80A "A threat to human health or safety may include, but shall not be limited to:" the nine items listed in the law under sub-headings (a) through (i). Although this may become a simple determination once Boards of health become experienced with

such threats, DF&W has had four years of experience making such determinations. DF&W and MDPH have agreed to assist Boards of health upon request. MDPH has likewise had four years of experience in addressing these types of public health threats. During this four-year period, less than ten such incidents have been reported to MDPH. Such assistance may be as simple as a phone conversation with the DF&W District Office Biologist (see attached Directory). That office may have an existing file of the applicant's flooding complaint. Such a file could be used to make a determination not only of the applicant's complaint but also as to the best strategy to solve the problem (e.g., traps, breach or water flow device). DF&W has reported that it has been their experience, however, that a site visit is usually necessary to make a determination as to the cause of the problem as well as to design a strategy for solving the problem. DF&W has agreed to accompany the Board of Health on site visits when requested. It is also recommended that conditions at the site be appropriately documented (e.g., with photographs, videos, maps, drawings, etc.).

The list of nine (a through i) public health/safety threats may be difficult to apply to each situation. For example, the applicant may request a permit to trap beaver because of a threat to a septic system. Under the law, "(c) beaver or muskrat-caused flooding of sewage beds, septic systems or sewage pumping stations" may be cause to issue a permit. A site visit may reveal that the flooding is caused by a beaver, but that the water is quite a distance from the septic system and the real problem for the homeowner is a flooded lawn (or the smell of the wetland or the mosquitoes in the wetland). While the Board of Health could make a determination under sub-section (i) (4) that the flooding of residential land is a public health/safety threat, it may be prudent to deny the application and have the applicant work with DF&W using non-lethal strategies such as a water flow device. Therefore, if the Board of Health denied the permit, the applicant would apply to DF&W for a non-emergency permit to breach the dam and install a water flow device. Permission would still be needed by the Conservation Commission. The difference between the two outcomes has to do with the speed with which the applicant gets a permit and whether the applicant gets permission to use Conibear traps. If the Board of Health determines that a public health/safety threat exists, a ten-day emergency permit

can be issued that authorizes the use of Conibear traps. If a water flow device is to be installed in the dam or the dam is to be breached, the Board of Health sends the applicant to the Conservation Commission (i.e., that the Conservation Commission issues an Emergency Certification under the Wetlands Protection Act for the installation of the device). Conversely, if the Board of Health makes a determination that there is NOT a threat to public health/safety, the applicant can employ one of the following options for resolving their problem: 1) appeal to MDPH for a determination as to the existence to the threat; 2) appeal to DF&W if there is a question as to the cause (i.e., type of wildlife) of the threat; 3) contact DF&W for assistance with solutions covered under the non-health or safety threat section of the law (last three paragraphs of M.G.L. c. 131, s. 80A; or 4) contact a private contractor or non-governmental organization for assistance.

Conservation Commission approval is still necessary for breaching a dam or installing a water flow device. If a Board of Health or MDPH determines that no threat exists, the Conservation Commission should not use the emergency certification mechanism but use its normal permitting process to address the activity.

The law provides that the Department of Environmental Protection (MDEP) shall make any determination of a threat to a public water supply. MDEP has issued a "Standard Operating Procedure" for such determination. In these cases the MDEP should notify the MDPH, Bureau of Environmental Health Assessment.

#### How Does The Board of Health Interact With The Conservation Commission?

Once a determination has been made by the Board of Health that an applicant has a public health or safety threat, the Board of Health shall issue an emergency permit to: 1) trap beaver and/or 2) breach beaver dams (and install water flow devices as above). The Board of Health has sole authority over permitting trapping, but joint authority with the Conservation Commission over the breaching of beaver dams.

The Legislature recognized that Conservation Commissions have an important role to play in solving beaver and muskrat problems, and specifically declared that breaching and other water management proposals are subject to "determinations and conditions" of Conservation Commissions pursuant to the Wetlands Protection Act (M.G.L. c.131, s.40). MDEP has recently developed a similar Guidance Document to all Conservation Commissions. On page four of that document, MDEP outlines a "Recommended Process" for the issuance of breach permits. Emergency Certifications may be issued by the Conservation Commission for up to 30 days to allow for the breaching of beaver dams or the installation of water flow devices. MDEP recommends that the Emergency Certification be issued to overlap the ten-day Board of Health permit. No matter what process is used, it is essential that the Conservation Commission approve modifications to beaver dams prior to such work.

#### Types of Permits for Health and Safety Threats

There are two types of permits for health and safety threats-- emergency permits issued by Boards of Health and extension permits issued by DFW. Emergency permits may be subdivided into initial permits and additional permits.

#### **Initial Emergency Permit**

If the Board of Health determines that a threat to human health and safety exists, the Board may authorize a ten-day emergency permit to applicants or their duly authorized agents that authorizes the applicant to take the following actions: 1) trap beaver or muskrat using Conibear-type traps, or cage or box type traps (subject to DFW regulations), 2) breaching of dams, dikes, bogs or berms (subject to approval and conditions of the Conservation Commission), and 3) use of any water-flow device or control structure (subject to approval and conditions of the Conservation Commission).

#### Discussion of Remedies Allowed by the Emergency Permit

1. Conibear-type Trap: upon determination that a public health or safety threat exists, the Board of Health has the authority to issue the ten-day emergency permit to the

applicant or his/her duly authorized agent to use Conibear-type body-gripping traps. These traps are restricted under the law and can only be used with a valid permit. Licensed trappers and Problem Animal Control agents have received training to use Conibear-type traps. DFW regulations also restrict the setting and placing of such traps. For example, Conibear-type traps can only be used underwater for the capture of beaver or muskrat. It is recommended that Boards of Health advise the applicant that during the period from June 1 through July 15, the kits are completely dependent on their mother. Beaver kits are born at the end of May and the beginning of June. Removal of the adults at this time may orphan beaver at an age when their survival may be jeopardized. In the case of public health and safety threats, the Board of Health does have the authority to issue emergency permits at this time.

2. Breaching: beaver dams are protected by law and cannot be breached without a permit. The Board of Health has the authority to issue the ten-day emergency permit to breach a beaver dam (and similar structures), subject to the conditions of the Conservation Commission. The permittee or his/her duly authorized agent has the responsibility to obtain the permission of the landowner where the beaver dam is located. The Board of Health emergency permit does not authorize the permittee to trespass on private property.

Water may be lowered from a site by breaching or removing a beaver dam. If beavers are not residing at the complaint site, this action can provide a long-term solution. Breaching a dam is usually only a temporary solution when beaver are occupying the site since they will repair the breach or rebuild the dam, thus re-flooding the site. The Conservation Commission will issue conditions for the breach to ensure that both upstream and downstream impacts to people, property and habitat are minimized. The Conservation Commission should advise the applicant that if a dam is breached during the winter months, the entrance to the beaver lodge might be exposed to the elements. Such exposure may jeopardize the survival of the beavers inside the lodge. Environmental conditions are such (i.e., snow and ice hinders establishment of new lodges or establishment of winter food caches) that beavers cannot relocate to a new area after

October 1 and before April 1. Limited breaches based upon Conservation Commission conditions may be warranted at this time.

3. Installation of Water Flow Devices: Boards of Health may issue emergency permits to breach beaver dams (or similar structures) for the purpose of installing water flow devices. Such permits are subject to Conservation Commission conditions. These devices can provide long-term solutions to beaver flooding problems provided that appropriate environmental conditions exist. Such devices do not work well in flat or shallow wetlands. The guidance above relative to breaching should also pertain to the installation of flow devices.

#### **Permitting Process for Extension Permits**

If the Board of Health has issued the initial ten-day emergency permit, and the threat to human health and safety has not been alleviated within the ten days, the applicant or his duly authorized agent, in conjunction with the Board of Health, shall apply to DFW for a 30-day extension permit. This permit allows all three remedies specified above, subject to determinations and conditions of the Conservation Commission.

If the 30-day extension permit is granted, DFW shall develop, with the assistance of the applicant, his/her agent, the Board of Health, and the Conservation Commission, a plan to abate the beaver or muskrat problem using alternative, non-lethal management techniques in combination with water flow devices, subject to Conservation Commission determinations and conditions. The plan may include cage or box type traps, if necessary.

#### Permitting Process for Additional Emergency Permits

Depending on the scenario, an applicant may obtain additional ten-day emergency permits, as follows.

Procedure 1: if the applicant has applied for and is awaiting, approval from DFW for the 30-day extension permit, the Board of Health may issue an additional ten-day emergency permit for all three remedies (see above). If, after such additional permit has expired, the applicant has still not received approval for the 30-day extension permit, the Board may issue a second ten-day additional permit. Such second additional emergency permit shall not allow the use of Conibear-type traps. In other words, an applicant is limited to two additional 10-day emergency permits under this procedure.

Procedure 2: the applicant applied for and received the initial ten-day emergency permit, and seemingly solved the problem within nine or less days (i.e., did not apply for the 30-day extension permit). However, the problem then recurs. He/she may then apply to the Board for an additional ten-day emergency permit. The applicant must state in writing that there exists on his/her property an animal problem which poses a threat to human health and safety, and which cannot be reasonably abated by the use of alternative non-lethal measures or cage or box traps, and that the applicant has tried to abate the problem using such alternative measures or cage or box traps.

Procedure 3: the applicant has applied for and received the initial ten-day emergency permit, has applied for and received the 30-day extension permit, and may have received one or two additional emergency permits under procedure one. The applicant appears to have trapped all beaver using the initial emergency permit, and is utilizing the extension permit to implement dam breaches or water flow device installation. The beaver problem then recurs. The applicant may then apply to the Board for an additional ten-day emergency permit. The applicant must state in writing that there exists on his/her property an animal problem which poses a threat to human health and safety, and which cannot be reasonably abated by the use of alternative non-lethal measures or cage or box traps, and that the applicant has tried to abate the problem using such alternative measures or cage or box traps.

Procedure 4: the applicant has applied for and received the initial ten-day emergency permit and has applied for the 30-day extension permit. While awaiting approval for the

30-day extension permit, the applicant has applied for and received one or two additional emergency permits. The 30-day extension permit is granted. The applicant appears to have trapped all beaver using the initial and additional emergency permits, and is utilizing the extension permit to implement dam breaches or water flow device installation. The beaver problem then recurs. The applicant may then apply to the Board for an additional ten-day emergency permit. The applicant must state in writing that there exists on his/her property an animal problem which poses a threat to human health and safety, and which cannot be reasonably abated by the use of alternative non-lethal measures or cage or box traps, and that the applicant has tried to abate the problem using such alternative measures or cage or box traps.

#### **Denials and Appeals**

The applicant has the right to appeal a Board of Health decision to deny a permit to either DPH or DFW. DPH and DFW have agreed to the following appeal process. DPH will determine appeals if the reason for appeal is related to threats to human health or safety as set forth in (a) through (i) in §80A, and DFW will determine appeals if the reason for appeal is related to the type of wildlife causing the problem.

#### Reporting

Boards of Health should send a copy of each permit (mailed on a monthly basis) to the Assistant Commissioner for Environmental Health, Department of Public Health, 250 Washington Street, Boston, MA 02108-4619.

**^**Part I

ADMINISTRATION OF THE GOVERNMENT

Title XX

PUBLIC SAFETY AND GOOD ORDER

Chapter 142

SUPERVISION OF PLUMBING

**Section 11** 

INSPECTORS APPOINTED FROM CIVIL SERVICE LIST; APPROVAL OF PLUMBING OR GAS FITTING; EXEMPTION

Section 11. The said inspector of buildings, if any, otherwise the board of health, of each city and town, shall, within three months after it becomes subject to sections one to sixteen, inclusive, appoint from the classified civil service list one or more inspectors of plumbing and one or more inspectors of gas fitting, who shall, in the case of the inspectors of plumbing, be practical plumbers and shall have had practical experience either as master or journeymen plumbers, continuously, during five years next preceding their appointment and in the case of inspectors of gas fitting, be practical gas fitters and shall have had practical experience either as master or journeymen gas fitters, continuously, during five years next preceding their appointment; provided, that any time spent in wartime service as defined in clause Forty-third of section seven of chapter four shall be deemed a part of the continuous practical experience so required; provided, however, that any such city or town may appoint plumbing inspectors who shall also be gas fitting inspectors. Such inspector of buildings or board may remove them subject to chapter thirty-one, and shall, subject to approval of the city council or board of

selectmen, fix their compensation, which shall be paid by the city or town. Said inspectors of plumbing or inspectors of gas fitting shall inspect all plumbing or gas fitting, as the case may be, in the process of construction, alteration or repair for which permits are granted within their respective cities and towns, and shall report to their appointing power or board violations of any law, ordinance, by-law, rule or regulation relative to plumbing or gas fitting; they shall perform such other appropriate duties as may be required. The approval of plumbing or gas fitting by any inspectors other than those provided for by this chapter shall not be a compliance therewith.

In a town having a population of less than five thousand persons the appointment of a plumbing inspector shall be exempt from the provisions of chapter thirty-one.

## 248 CMR 3.00: GENERAL PROVISIONS GOVERNING THE CONDUCT OF PLUMBING AND GAS FITTING WORK PERFORMED IN THE COMMONWEALTH

#### 3.05: Permits and Inspections

(1) Permits.

#### (a) Jurisdiction of Inspectors.

- 1. State Inspectors. Permits to perform plumbing and/or gas fitting work in buildings owned, used, leased, or constructed by the Commonwealth pursuant to M.G.L. c. 142, § 21, shall be submitted to State Inspectors who shall grant or deny such Permit applications and who shall perform the related Inspections.
- 2. Local Inspectors. For all buildings that are not owned or constructed by the United States Government or that are not owned, used, leased, or constructed by the Commonwealth, pursuant to M.G.L. c. 142, §§ 11, 11A and 12, all Permit applications shall be submitted to the Local Inspectors who shall grant or deny all such Permit applications and who shall perform the related Inspections.
- 3. For those buildings owned or constructed by the United States Government, Permits and Inspections for those buildings are only required at the request of the Federal Government.
- 4. In cases of emergency, a plumbing fixture or gas appliance may be installed, repaired, or turned on temporarily by the licensee prior to obtaining a permit provided:
- a. the licensee has performed all testing required by 248 CMR;
- b. the licensee and gas supplier (if applicable) are satisfied that the installation or repair will assure safe operation; and
- c. the Inspector is notified and a regular inspection is made at the earliest opportunity and in no case later than the next working day.
- 5. Violations of Other Codes Whenever an Inspector observes an apparent or actual violation of a statute, code, regulation, standard, municipal bylaw or ordinance not within the explicit authority of the Inspector under M.G.L. c. 142 and these regulations, the Inspector should report the findings to an official or entity having jurisdiction over that matter. The resolution of this apparent or actual violation shall not be construed as a requirement of these regulations and shall be enforced by the official or entity having jurisdiction over that matter, not the Inspector.

#### (2) Plans and Specifications.

- (a) Whenever plans and specifications are necessary or requested by the Inspector for any plumbing or gas fitting work, the applicant shall submit such plans to the Inspector. The Inspector may review the plans for up to 30 days prior to issuing the Permit.
- (b) The plans and specifications shall include: 1. the name and address of the designer; 23 2. a certification by the designer that said plans and specifications are in compliance with 248 CMR; and 3. the stamp of a Massachusetts Professional Engineer.
- (c) Plans and specifications shall not be required for minor repairs and alterations.

#### Good Morning, Stuart:

I tried to stay inside as much as possible to avoid melting! I hope that you were able to enjoy the weekend even in the heat!

I understand from your email that the Board of Health would like hire its own attorney to provide legal assistance with the site assignment process. However, in my opinion, the Board of Health does <u>not</u> have authority to employ legal counsel and a vote of the Selectboard would be necessary to hire counsel to assist the Board of Health.

As a general rule, the power to appoint an officer is in its nature an executive power. Attorney General v. Varnum, 167 Mass. 477, 480 (1897). Further, in the absence of specific legislative authority, a board or department of a municipality does not have authority to employ legal counsel. O'Reilly v. Scituate, 328 Mass. 154, 155 (1951). "It is conventional learning that a municipal department is not permitted to bring suit for the town without specific authorization from the town or from agents entitled to act for it unless, indeed, there is governing legislation conferring the power on the department. The rule serves to prevent confusion or conflict in the direction and management of municipal litigation." Board of Public Works of Wellesley v. Board of Selectmen of Wellesley, 377 Mass 621, 624 (1979); Jenney v. Mattapoisett, 335 Mass. 673 (1957) (finance committee); Howes v. Essex, 329 Mass. 381, 384 (1952) (water commissioners).

The decisions referenced above emphasize the fact that the centralization of authority in the executive to appoint legal counsel serves the dual purpose of controlling expenses and improving management of a municipality's affairs. The cases cited in the <u>Wellesley</u> decision confirm the principle that only those bodies which are expressly authorized may retain legal counsel and/or direct legal services, and that there is no inherent or implied right vested in municipal boards or agencies to employ separate counsel or otherwise to control legal services.

In my opinion, consistent with Section 8-10 of the Ware Town Charter, G.L. c.4, §7, and common law, the Selectboard, as the Town's chief executive, has the authority to retain counsel and the Board of Health does not have the independent authority to retain counsel without the Selectboard's authorization. See Town of Rehoboth v. Roger Breault, et al. (Land Court Misc. Case No. 09MISC405262 (2009)) (ZBA had no authority to retain counsel in absence of approval by Board of Selectmen or applicable legislation and fact that counsel agreed to provide services pro bono was immaterial as ZBA is without executive authority to direct the legal interest of the Town).

In sum, in my opinion, the Board of Health's request to hire outside counsel must be presented to the Selectboard for approval before it may hire counsel. As always, please do not hesitate to contact us if you have any further questions or concerns.

Best, Nicole

Nicole Costanzo, Esq.  $KP \mid LAW$  101 Arch Street, 12th Floor Boston, MA 02110

#### **Barlow, Betty**

From:

Beckley, Stuart

To:

Thursday, September 1, 2022 10:42 AM

Subject:

Barlow, Betty; Metcalf, Judy KP opinion on appointment

Attachments:

Attorney appointment opinion.docx

August 12, 2022

Ms. Judy Metcalf, RS., CHO Health Agent Ware Board of Health 126 Main Street Suite D Ware, MA 01082

Re: Resource Ware C&D Handling Facility - Site Assignment Air & Sound Peer Review Ref 4787

Dear Ms. Metcalf:

Tech Environmental, Inc. (Tech) is pleased to provide the Ware Board of Health (BoH) with our proposal to conduct a peer review of the air quality and sound impact assessments included as part of the June 30, 2022 ReSource Ware C&D Handling Facility BWP SW38 Permit Application Site Suitability Application for Major Modification of Existing Site Assignment prepared by Sanborn Head (herein referred to as the Application) for the existing C&D handling facility (Facility) on 198 East Street, Ware, MA. The application has been prepared in support of ReSource Ware's proposed modification to the existing site assignment, where the modification seeks to increase the maximum capacity of the Facility from 750 tons per day (TPD) of construction and demolition (C&D) material to a new maximum capacity of 1,400 TPD.

Tech understands that the BoH has several concerns about the expansion of the Facility's maximum capacity related to potential air quality and noise impacts associated with:

- 1. Increasing hours of operations.
- 2. Increasing truck traffic at the site and along truck routes.
- Doubling the rail car capacity.
- 4. Understanding the potential building design features to reduce noise impacts.

As part of our peer review, Tech will review the Application to confirm that the Facility will comply with federal, state, and local air quality and noise regulations and address the above stated concerns by the BoH.

Tech will conduct the following tasks:

Review of the Application and prepare a peer review letter report assessing the completeness of
the air quality and sound impact assessments prepared by Epsilon Associates (Epsilon). This will
also include a cursory review of the traffic and rail impact assessments to ascertain information
that supported the air quality and sound impact assessments. Participate in one (1) virtual
meeting to address questions and comments from the BoH and Town counsel.

- 2. Address questions and comments from Epsilon on our peer review letter. Review supplemental documents provided by Epsilon provided in response to our peer review letter. Prepare a second peer review letter. Participate in one (1) virtual meeting to address questions and comments from the BoH and Town counsel, if necessary (Optional)
- 3. Participate in BoH site assignment hearings, if requested (Optional).

Tech has over 38 years of air quality, noise, dust and odor monitoring and modeling experience in Massachusetts. We have provided air quality, noise, dust and odor impact assessments for similar C&D handling facility operations and performed independent peer review studies for cities and towns of mixed use, commercial and industrial development projects including solid waste site assignment hearings.

#### SCOPE OF SERVICES

#### Task 1 - Peer Review of Application Air Quality and Sound Impact Assessments

Tech will examine the air quality and sound impact assessments methodologies and results prepared by Epsilon included in the Application to verify its accuracy and completeness and address the above stated concerns by the BoH. This will also include a cursory review of the traffic and rail impact assessments to ascertain information that supported the air quality and sound impact assessments. Tech will identify any deficiencies in the air quality and sound impact assessments and make recommendations to correct those deficiencies. The work product for this task will be a peer review letter report summarizing our finding that will be submitted to the BoH and Town counsel. Tech will participate in one (1) virtual meeting with BoH and/or Town counsel to review our peer review letter. Tech will finalize the letter report based on one round of comments from the BoH and the Town's counsel. We anticipate that Epsilon will update their air quality and sound impact assessments accordingly and prepare a response that will be reviewed by Tech in Task 2 below.

Not-to-Exceed Cost: \$9,400

#### Task 2 – Perform Additional Peer Review Analyses (Optional)

Tech anticipates that Epsilon provide responses to our Task 1 peer review letter and may provide additional air quality and sound impact assessments to correct the potential deficiencies in the Application. Tech will review the peer review response letter and additional air quality and sound impact assessments. The work product for this task will be a second peer review letter report summarizing our findings. As part of this task, Tech will participate in one (1) virtual meeting with the BoH and Town counsel to review our second peer review letter. Tech will finalize the letter report based on one round of comments from the BoH and the Town's counsel.

Tech assumes only one (1) round of peer review of the updated air quality and sound impact assessments in this task. Any additional peer review of further changes to these studies will require an amendment to our scope of services.

Not-to-Exceed Cost: \$5,400



#### Task 3 -Participate in Site Assignment Hearing(s) (Optional)

If requested by the BoH or Town counsel, Tech will participate in the site assignment hearing(s) to answer questions from the BoH on our peer review letter reports. The preparation and participation in the site assignment process will be performed on a time and materials basis at my hourly rate of \$280.

#### Cost and Terms

The Scope of Work will be done on a Time & Materials basis using our current rates and terms (copy attached). The total not-to-exceed cost for Tasks 1 and Optional Task 2 is \$14,800. Prior to proceeding with the scope of services, a signed copy of this agreement with billing instructions or a Purchase Order from the Town referencing this letter for Task 1 is required. If the optional Task 3 is required, Tech will invoice the Town upon completion of this task, and payment is due 30 days from the date of invoice.

#### Additional Work

Tech will perform any additional work the BoH may request that is beyond the Scope of Work, the cost of which is not included in the budget given above. Examples include participating in additional virtual meetings and review of other facility documents beyond the scope of services above, performing a review of the electronic air quality and sound modeling input files, and conducting a site visit.

We are ready to start work upon receipt of a signed copy of this agreement with billing instructions or a Purchase Order from the Town referencing this letter.

Sincerely,

TECH ENVIRONMENTAL, INC.

W. acc In allace

Marc C. Wallace, QEP, INCE

Vice President

4787/Contracts/ReSource Peer Review Proposal 081222

Accepted by:

WARE BOARD OF HEALTH

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Title

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Date





#### TIME & MATERIALS BILLING RATES AND TERMS

Effective January 1, 2022

#### Labor

Labor is charged on an hourly basis to clients. The current hourly rates are broken into three categories: Senior Engineers/Scientists, Managing Engineers/Scientists, and Project Staff. Both Senior Engineers/Scientists and Managing Engineers/Scientists are specialists with at least 10-15 years' experience in our focused services. Senior Engineers/Scientists are specialized technical experts in our focused services, who are not officers of the firm.

Senior Engineers/Scientists	
Senior Engineer/Scientist VII	\$325
Senior Engineer/Scientist VI	\$320
Senior Engineer/Scientist V	\$315
Senior Engineer/Scientist IV	\$280
Senior Engineer/Scientist III	\$235
Senior Engineer/Scientist II	\$195
Senior Engineer/Scientist I	\$175
Senior Technician	\$115
Senior Administrative Assistant	\$75
Managina Fraincaus/Salantists	
Managing Engineers/Scientists Managing Engineer, Scientist VII	\$325
Managing Engineer, Scientist VI	\$320 \$320
Managing Engineer, Scientist V	\$315
Managing Engineer, Scientist V	\$280
Managing Engineer, Scientist IV	\$235
Managing Engineer, Scientist II	\$195
Managing Engineer, Scientist I	\$175
Managing Engineer, Scientist 1	3173
Project Staff	
Project Engineer, Scientist V	\$175
Project Engineer, Scientist IV	\$165
Project Engineer, Scientist III	\$150
Project Engineer, Scientist II	\$125
Project Engineer, Scientist I	\$105
Field Technician	\$95
Technician-in-Training	\$75
Administrative Assistant	\$55

Managing Engineers/Scientists are Project Managers with significant technical expertise that often complete some or all of the technical aspects of the projects while managing the projects. The Managing Engineers/Scientists category also include Client Officers that interact with the client, but also provide technical support, review, and approval.

#### **Materials**

Tech Environmental maintains an inventory of equipment that it can use for technical assessments on projects. Some of the equipment is intended for taking measurements, some for monitoring conditions, and some for collecting samples. This equipment is charged out at a rental rate that is priced competitively with equipment rental companies. The advantages of us providing the rental equipment is that (1) Tech can mobilize quickly, if and when required, and (2) the equipment is familiar and fully functional. The field equipment daily, weekly and monthly rates are:

Equipment	Daily Rate	Weekly Rate	Monthly Rate
Constant Flow Air Sampling Pumps	\$80	\$200	\$500
Peristaltic Pump	\$80	\$200	\$500
Bio-Pump (Zefon)	\$80	\$200	\$500
TSI Velocicale Model 8360	\$100	\$200	\$500
Flux Chamber Point Odor/Air Sampling System	\$100	\$200	\$500
Flux Chamber Area Odor/Air Sampling System	\$125	\$300	\$600
Flux Chamber Sweep Air System	\$75	\$200	\$400
Jerome J605 Hydrogen Sulfide Analyzer	\$500	\$1,200	\$1,500
Teflon or Silicon Tubing (per 10-ft length rate)	\$30	\$30	\$30
Digital Dwyer Manometer	\$25	\$75	\$150
Nasal Ranger Field Dilution Module	\$200	\$400	\$900
Odor Intensity Kit Field Rental	\$200	\$300	\$500
Odor Intensity Kit Purchase (plus delivery)	\$500	\$500	\$500
GPS	\$25	\$75	\$150
Toughbook Field Laptop	\$50	\$150	\$300
2-meter Meteorological Station	\$80	\$200	\$500
10-meter Meteorological Station	\$200	\$300	\$600
Light Meter	\$25	\$75	\$150
Gastec or Drager Sample Pump System	\$30	\$90	\$180
10-Liter Tedlar Sample Bags (per bag rate)	\$30	\$30	\$30
Ozone Generator	\$100	\$200	\$500
OdaLogger	\$200	\$300	\$500
2 <sup>nd</sup> (and additional) OdaLogger	\$100	\$150	\$500
Sound Monitoring Equipment			
ANSI Type 1 Dynamic Sound Level Analyzer	\$500	\$1,200	\$2,400
Single ANSI Type 1 Sound Analyzer	\$400	\$700	\$1,600
2 <sup>nd</sup> (and additional) ANSI Type 1 Sound Analyzer	\$200	\$500	\$1,200
Long Term Sound Analyzer Environmental Protection Kit(s)	\$100	\$300	\$800

In the case of auto travel a fixed rate of \$0.75/mile applies. In-house report production costs for color copies of studies, designs, and reports that require more than 500 pages total, will be charged at \$0.10 per page. Projects that require specialty software, including but not limited to wind modeling, air dispersion modeling, interior acoustic modeling, and environmental noise modeling, etc., will be billed a flat fee of \$500 to cover software and maintenance/upgrade costs. Other materials, outside labor costs, or outside equipment rental or services are charged to clients at cost plus ten percent.



#### **Terms and Conditions**

Payment – Each invoice for Tech Environmental, Inc. (TE) goods and services is due and payable within thirty (30) calendar days of delivery of the invoice. Interest shall accrue on any unpaid balance at the rate of 1-1/2% per month from the 31st day following delivery of the invoice. All costs to collect unpaid invoices, including but not limited to reasonable attorneys' fees and court costs, shall be borne by the Client. Payment for all work and services rendered hereunder is due and owing without any contingency. No contract or agreement by the Client with any third party shall affect or impair Client's obligations to TE.

Suspension – If Client fails, for any reason, to pay any invoice within the aforesaid thirty (30) calendar day period, TE may give written notice of suspension to Client and, if Client fails to pay all overdue amounts due to TE within seven (7) days of the date on which such notice was delivered to Client, TE shall be entitled, without further notice, to suspend or terminate the performance, and the provision to Client, of all goods and services. TE shall not be liable for any damages or delays caused by such suspension, nor be deemed to have waived any right established hereunder or by law to collect overdue amounts.

Presence on Client's Premises – In the event TE or its employees, officers, directors, shareholders, agents, or subcontractors (collectively, "Personnel") need to be on Client's premises for any reason connected with TE's goods and services, Client shall maintain at all times adequate general liability insurance coverage in minimum amounts standard for Client's industry. Upon TE's request, Client shall furnish to TE copies evidencing effective policies for all such insurance.

Reperformance – TE assumes professional and technical responsibility for performance of services in accordance with recognized professional standards of good engineering practice. If any of TE's services in connection with a specific assignment fail to meet the aforesaid standards, and Client advises TE thereof in writing within one (1) year after completion of such assignment, TE agrees to reperform the deficient portion of such services without charge to the Client up to a maximum amount equivalent to the compensation received for the deficient services rendered.

Disclaimers and Limitations on Liability - EXCEPT AS PROVIDED IN THE PREVIOUS PARAGRAPH, NO WARRANTY OR GUARANTY, EXPRESSED OR IMPLIED, IS MADE WITH RESPECT TO THE GOODS AND/OR SERVICES FURNISHED BY TE AND ALL IMPLIED WARRANTIES ARE HEREBY DISCLAIMED, INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL TE BE LIABLE FOR LOSS OF PROFITS, LOSS OF REVENUES, INTEREST, CLAIMS OF CUSTOMERS, LOSS OF FACILITY USE, REPLACEMENT POWER COSTS, DAMAGE OR INJURY TO THE ENVIRONMENT, INCREASED EXPENSE OF OPERATIONS, LOSS BY REASON OF SHUTDOWN OR LATE COMPLETION, OR ANY OTHER CONSEQUENTIAL, SPECIAL OR INDIRECT LOSS OR DAMAGE AND, CLIENT HEREBY RELEASES TE AND PERSONNEL FROM ANY AND ALL SUCH LIABILITY, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE, IRRESPECTIVE OF FAULT, NEGLIGENCE, OR STRICT LIABILITY. Under no circumstances shall TE's Personnel be liable personally for any obligations of TE or its suppliers and subcontractors or their employees arising under any agreement with Client or in connection with the provision of goods and services to Client. Client and TE recognize and agree that TE and its Personnel bear no responsibility for the creation, existence, presence, transportation, handling, disposal, storage and/or other operations or activities in relation to toxic, hazardous, radioactive, infectious, or other dangerous gas, vapor, smoke, fumes, soot, acid, alkali, chemical, metal and/or biological, fluid, liquid, or solid irritant, contaminant, pollution, waste, and/or other substance, material, or condition in relation to the work, whether at the site of services or elsewhere; and further, TE's compensation is in no way commensurate with the risks of personal or bodily injury, death and/or property damage associated with such activities and/or substances. Client hereby releases TE and its Personnel from and agrees to defend, indemnify, and hold harmless TE and its Personnel against any and all claims, actions, damages, fines, penalties, fees, costs, and other liabilities (a) in connection with the work, whether arising in contract, tort, or otherwise, irrespective of fault, negligence, strict liability or otherwise, excluding only TE's obligation to reperform work as provided above or (b) due to any environmental release or exposure to any of the toxic or hazardous properties of any chemicals or materials.

Notices—All notices shall be in writing and shall be deemed delivered as follows: (a) upon receipt if delivered personally, by courier service, or certified mail, return receipt requested to the party to be notified; (b) when sent by electronic mail or by confirmed facsimile if sent during normal business hours of the recipient or, if not, then on the next following business day; or (c) four (4) calendar days after having been sent by prepaid first class mail.

Miscellaneous Provisions - These terms and all matters arising between the parties including, without limitation, any matter regarding the relationship of the parties, shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without reference to or the application of its conflict or choice of law rules or provisions. Any action brought in relation to these terms, or in regard to the relationship of the parties, shall be brought before a federal or state court located in Boston, Massachusetts. THE PARTIES EACH KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE (TO THE EXTENT PERMITTED BY APPLICABLE LAW) ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY OF ANY DISPUTE ARISING BETWEEN THEM AND AGREE THAT ANY SUCH ACTION, CLAIM, OR DISPUTE SHALL BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY. These terms may not be modified or waived except in a written instrument executed by an authorized representative of TE.





July 29, 2022

Judith Metcalf, RS., CHO Ware Board of Health Town of Ware 126 Main Street Ware, MA 01082

Re: 198 East Street, Ware, Massachusetts

Transportation Planning/Traffic Engineering Services

Dear Ms. Metcalf:

In response to your request. Howard Stein Hudson (HSH) has prepared this proposal to review the transportation-related material for the proposed expansion of the ReSource Ware C&D Handling Facility located at 198 East Street in Ware, Massachusetts. The existing facility is permitted to handle up to 750 tons per day (TPD) of construction and demolition (C&D) waste. The Proponent wishes to expand the facility to be able to process up to 1,400 TPD and to also allow street sweeping and catch basin cleaning waste materials to be processed at the facility. The Proponent was required to submit an application to both the Massachusetts Department of Environmental Protection (MassDEP) and the Town of Ware Board of Health (BoH). The application includes a traffic study to document the transportation impacts of the project, which was prepared as part of the Massachusetts Environmental Policy Act (MEPA) submission in April 2022. As described in this proposal, HSH will review the traffic study prepared for the project, and relevant portions of the site plan and site plan application. HSH will present the findings in the form of a Technical Memorandum and attend up to one (1) meeting with the Town to review findings. HSH will also participate in a site visit.

## Scope of Services

#### Task 1. Peer Review

HSH will address the following transportation issues to ensure that the study analysis complies with industry standards, is applicable to the study area and region, and addresses the traffic and transportation concerns of the Town of Ware.

 Study Area Boundaries: Are all intersections that would be significantly impacted by the proposed development included?

- 2) Traffic Data Collection: Were volumes seasonally factored, if necessary, to account for the peak travel periods in the area? Were volumes adjusted to account for continuing effects of the COVID-19 pandemic on traffic volumes?
- 3) Selection of the Peak Hour: Is the peak hour of the facility concurrent with the peak hour of adjacent street commuter traffic? Should both peak hours be analyzed? Does the project adequately account for traffic impacts to peak weekend activities, if relevant?
- 4) Off-site Changes: Will any transportation projects take place within the study area prior to the opening date, and have these been incorporated in the analysis?
- 5) Non-site Traffic: Was the Town of Ware contacted to provide an approved background growth rate for the region? Was the expected traffic volume from other planned developments in the area considered in the analysis?
- 6) Trip Generation (including vehicle occupancy): What sources were used for the development of the site trip generation? How does it compare to national standards? How many different sources were used to develop the trip generation or vehicle occupancy rates? If traffic counts at similar sites were used, how do the characteristics of those sites and the surrounding area compare to the proposed project development and the Town of Ware? Does the trip generation take into account existing and/or future mode split?
- 7) Parking Demand: What methodology and assumptions were used in developing peak parking demands? Does the parking demand calculation take into consideration the desired mode split? Is parking unbundled from the residential units?
- 8) Site Traffic Distribution and Assignment: What methodology was used? Is it consistent with historical information in the area?
- 9) Traffic Impact Analysis: What methodology was used for traffic analyses? Do they adequately reflect field conditions? Was potential queuing at intersections and time of day signal timing properly assessed?
- 10) Mitigation / TDM Measures: Have mitigation and Transportation Demand Management (TDM) measures been proposed to encourage use of alternate modes of transportation? Are these measures consistent with City guidelines?
- 11) On-site Planning and Parking: Has site access been located to minimize impacts to the adjacent street network? Has internal circulation been designed to provide sufficient vehicular queue storage? Have service, delivery, and emergency vehicles been provided for in the design? Have peak parking demands been addressed?
- 12) Pedestrians/Cyclists: Does the site design consider the existence of pedestrians and bicyclists in the area, and does it conform to any ADA requirements?

- 13) Are there any construction-period issues that should be addressed?
- 14) Have geometric design criteria been met? Are proposed curve radii, sight distances, and stopping distances adequate for passenger vehicles and trucks? Does the proposed condition provide a safe environment for autos, pedestrians, and cyclists?

HSH will provide the Town of Ware with a Technical Memorandum documenting the results of the review and the review process. HSH has also included time in this proposal to review the Proponent's response to any transportation-related comments.

#### Task 2. Meetings

We have budgeted to attend up the following meetings:

- One (1) site visit:
- One (1) working meeting with the Town and the developer, which we presume will take place over a virtual platform such Zoom or Teams; and
- One (1) Board of Health hearing to present our findings, which we presume will take place in person.

Additional meetings can be attended at the Town's request as an additional service.

## Staffing

As with all our peer reviews, HSH will make the most appropriate staff available to accommodate not only the review itself, but also the site visit and any meetings. HSH offers a well-rounded team of individuals who have exceptional knowledge and experience and whose technical expertise complements that of the other team members.



I, Keri Pyke, P.E., PTOE, Principal of Transportation Planning, will serve as Principal in Charge/Project Manager. As Principal at HSH, I am responsible for overseeing a variety of transportation planning and traffic engineering projects in the Boston area. I have worked on both public and private projects in a variety of cities and towns throughout the Commonwealth, as well as for other state and municipal agencies throughout New England and New York. I am well-versed in

many aspects of transportation, including operational analysis, parking, safety studies, pedestrian and bicycle studies, traffic signal design, traffic management, and peer reviews. I have a B.S. in Civil Engineering from Rensselaer Polytechnic Institute.

I will be assisted by HSH engineers, planners, and graphics/production staff, as appropriate.

## Fee Estimate

The total cost for the previously described scope of services – estimated at \$12.200, including labor, overhead, direct costs, and fee – is billable monthly on a time and materials basis, such that if the hours are not spent, you will not be billed. Invoices are due within thirty (30) days of receipt. Rates are valid through June 30, 2023. Meetings are budgeted as outlined previously; additional meetings, if required, will be billed at the hourly rates provided.

Task	Budget
Task 1. Peer Review	\$7,500
Task 2. Meetings	\$4,700
TOTAL	\$12,200

### Schedule

HSH will coordinate with you to schedule the work as may be necessary to meet any deadlines. HSH can begin conducting the review of the traffic impact study immediately upon receipt of written Notice to Proceed. and receipt of all pertinent review documents. The Technical Memorandum can be completed within three (3) weeks of Notice to Proceed and receipt of all relevant documents.

## Approval

Should this proposal be acceptable to you, this letter can serve as a contract by an authorized signature below and returning a copy to us. Should our understanding of the Project be incorrect or incomplete, or should you have any revisions or changes, please contact me directly and we will incorporate them as directed. Thank you for contacting HSH: we look forward to working with you.

Sincerely.

Keri Pyke, P.E., PTOE

Principal

Approved:

Town of Ware

By:

Date:

Japal 2 200

### Hourly Billing Rates through June 30, 2023

Project Role	Hourly Rate	
Co-op/Administrative Assistant	\$85 - \$140	
Graphics/Production	\$100 - \$165	
Junior Engineer/Planner	\$105 - \$170	
Engineer/Planner	\$135 - \$210	
Senior Engineer/Planner	\$175 - \$275	
Principal/Senior Advisor	\$210 - \$395	

Rates subject to annual adjustment on July 1, 2023.



Commonwealth of Massachusetts

Executive Office of Energy & Environmental Affairs

## Department of Environmental Protection

Western Regional Office • 436 Dwight Street, Springfield MA 01103 • 413-784-1100

Charles D. Baker Governor

Karyn E. Polito Lieutenant Governor Kathleen A. Theoharides Secretary

> Martin Suuberg Commissioner

May 5, 2022

Mr. John Farese, Vice President and Business Manager ReSource Waste Services of Ware, LLC 89 Lowell Road Salem NH 03079

Re:

NOTICE OF NONCOMPLIANCE

Enforcement # 00013255

Noncompliance with MGL c. 111, sec. 150A & 310 CMR 19.000;

At:

ReSource Waste Services of Ware, LLC

198 East Street Ware, MA SWM File No. 22-309-004

Dear Mr. Farese:

Enclosed please find a Notice of Noncompliance, an important legal document. Massachusetts Department of Environmental Protection ("MassDEP" or "Department") personnel have observed, based on an inspection performed on April 20, 2022 that the ReSource Waste Services facility in Ware, MA was in noncompliance with one or more laws, regulations, orders, licenses, permits, or approvals enforced by the MassDEP.

If you have any questions regarding this matter, please contact the undersigned of this office at Daniel.Hall@Mass.gov.

Sincerely,

Section Chief

Bureau of Air and Waste

DH/tbs



## Commonwealth of Massachusetts Executive Office of Energy & Environmental Affairs

## Department of Environmental Protection

Western Regional Office • 436 Dwight Street, Springfield MA 01103 • 413-784-1100

Charles D. Baker Governor

Karyn E. Polito Lieutenant Governor Bethany A. Card Secretary

Martin Suuberg Commissioner

July 26, 2022

Resource Waste Services Ware, LLC 198 East Street Ware, MA 01082

Re:

Ware

198 East Street

Attn: Frederic Bruneau, Env. Compliance Manager

Release of Lead/Stormwater Basin

Notice of Noncompliance Enforcement #:00013550

#### Notice of Noncompliance M.G.L. c. 21E, 310 CMR 40.0000

## THIS IS AN IMPORTANT NOTICE. FAILURE TO TAKE ADEQUATE ACTION IN RESPONSE TO THIS NOTICE COULD RESULT IN SERIOUS LEGAL CONSEQUENCES

Dear Mr. Bruneau:

The Department of Environmental Protection (the "Department") has determined that you (as used in this letter, "you" refers to Resource Waste Services, LLC) are not in compliance with one or more requirements enforced by the Department. The Department's records indicate that you are a Potentially Responsible Party (PRP) for one or more release(s) and/or threat(s) of release of oil and/or hazardous materials at the disposal site (the site) named above. As of the date of this Notice, you are not in compliance with regulatory deadlines for investigating and cleaning up the disposal site. Specifically, lead-contaminated media that was excavated at the site during performance of a Limited Removal Action in accordance with 310 CMR 40.0318 was not transported off-site for disposal in accordance with the requirements of the Massachusetts Contingency Plan.

If the required actions are not completed by the deadlines specified below, an administrative penalty may be assessed for every day after the date of this Notice that the noncompliance occurs or continues. Such a penalty may be assessed in an amount of up to \$1,000 per violation per day.

Attached is a Notice of Noncompliance that describes (1) the requirement violated, (2) the date and place that the Department asserts the requirement was violated, (3) either the specific actions which must be taken in order to return to compliance or direction to submit a written proposal describing how and when you plan to return to compliance and (4) the deadline for taking such actions or submitting such a proposal. These requirements are governed by Massachusetts General Laws Chapter 21E, and the regulations adopted

Resource Waste Services Ware, LLC 198 East Street, Ware Notice of Noncompliance# 00013550 Limited Removal Action Page 2

thereunder (310 CMR 40.0000 – the Massachusetts Contingency Plan or "MCP"). Please consult the MCP for the complete explanation of these requirements. The MCP may be viewed on the Department's webpage at <a href="http://www.state.ma.us/dep/bwsc/regs.htm">http://www.state.ma.us/dep/bwsc/regs.htm</a>. Copies may be purchased through the State Book Store in the State House (617-727-2834).

The Department reserves its rights to exercise the full extent of its legal authority in order to obtain full compliance with all applicable requirements, including, but not limited to, criminal prosecution, civil action including court-imposed civil penalties, or administrative action, including administrative penalties imposed by the Department.

If you have any questions about this Notice, please contact David Slowick of the Department's Western Regional Office at 413-755-2246. In responding to this Notice of Noncompliance, please reference the NON number 00013550 to ensure proper tracking of your response.

Sincerely,

Ehzeld MAtonhant

Elizabeth M. Stinehart Deputy Regional Director Bureau of Waste Site Cleanup

EMS/nea//kmn P:Ware Resource Waste Services NON.# 00013550

Certified Mail # 7019 2280 0002 1993 4726 and Standard Mail Delivery

e-cc: Ware:

Board of Health Board of Selectmen

Laura Bugay, P.E.- Green Seal Environmental

Denise Andler, Catherine Skiba, Daniel Hall, Thomas Speight

Resource Waste Services Ware, LLC 198 East Street, Ware Notice of Noncompliance# 00013550 Limited Removal Action Page 3

#### Notice of Noncompliance Summary NON# 00013550

#### **ENTITY IN NONCOMPLIANCE:**

Resource Waste Services, Ware, LLC 198 East Street Ware, Massachusetts 01082

#### LOCATION OF NONCOMPLIANCE:

198 East Street, Ware, Massachusetts 01082

#### DATE(S) OF NONCOMPLIANCE:

April 14, 2022, for transport of remediation waste off-site for disposal without utilizing a Bill of Lading.

#### DESCRIPTION OF REQUIREMENT(S) NOT COMPLIED WITH:

On about March 17, 2022, Resource Waste Services Ware, LLC ("you") arranged for performance of a Limited Removal Action, as described in the Massachusetts Contingency Plan at 310 CMR 40.0318. The Limited Removal Action was undertaken after consultation with the Department's Division of Solid Waste Management in order to address the detection of 710 parts per million of lead in contaminated media present in the basin. Upon completion of the Limited Removal Action, contaminated media was transported off-site via railcar under a Materials Shipping Record, in violation of 310 CMR 40.0032(2).

Pursuant to 310 CMR 40.0032(2), Contaminated Media and Contaminated Debris containing one or more hazardous materials at levels equal to or greater than an applicable Reportable Concentration specified in 310 CMR 40.0300 and 40.1600, and which are not a hazardous waste, shall be managed under the Bill of Lading process described in 310 CMR 40.0034 or under a Hazardous Waste Manifest in accordance with 310 CMR 30.000 when they are transported from a disposal site.

#### DESCRIPTION OF ACT OR OMISSION CONSTITUTING NONCOMPLIANCE:

Failure to utilize a Massachusetts Bill of Lading to transport contaminated media generated during performance of a Limited Removal Action at the site.

Resource Waste Services Ware, LLC 198 East Street, Ware Notice of Noncompliance# 00013550 Limited Removal Action Page 4

#### DESCRIPTION AND DEADLINES(S) OF ACTIONS(S) TO BE TAKEN

The Department received a Limited Removal Action Summary Report, dated April 14, 2022. The Report was submitted on your behalf by Green Seal Environmental. No further action by you is necessary to correct the specific violation cited in the Notice of Noncompliance. However, this Notice may be used to establish a pattern of non-compliance in the event Resource Waste Services Ware, LLC fails to comply with M.G.L. c. 21E and the Massachusetts Contingency Plan in the future.

#### DEPARTMENT OF ENVIRONMENTAL PROTECTION

DATE: July 26, 2022

By: Ehzeld-MAtachener

Elizabeth M. Stinehart Deputy Regional Director Bureau of Waste Site Cleanup



## Commonwealth of Massachusetts Executive Office of Energy & Environmental Affairs

## Department of Environmental Protection

Western Regional Office • 436 Dwight Street, Springfield MA 01103 • 413-784-1100

Charles D. Baker Governor

Karyn E. Polito Lieutenant Governor Bethany A. Card Secretary

Martin Suuberg Commissioner

August 22, 2022

Mr. John Farese, Vice President Director of Operations ReSource Waste Services of Ware, LLC 198 East Street Ware, MA 01082

Re:

Ware - SWM - Handling Facility

ReSource Waste Services of Ware, LLC BWP SW 45: Alternative Modification to Any

SW Management Facility

ePlace Application No. 22-SW45-0009-APP

File No. 22-309-004, FMF#377539

Dear Mr. Farese:

On May 6, 2022, MassDEP issued an approval for a SW-45 Alternative Modification application filed for the ReSource Waste Services facility at 198 East Street in Ware, Massachusetts. As part of this application, ReSource proposed to install a Fire Rover fire monitoring and suppression system to serve the facility's handling building. Specific Condition #4 of MassDEP's approval required installation of the Fire Rover system within 180 days of the effective date of the permit.

On June 7, 2022, MassDEP received a request via email from ReSource's consultant, requesting an extension of this deadline from 180 days to one year, citing lead time and logistics concerns.

MassDEP hereby approves the extension of the deadline to have Fire Rover installed to May 6, 2023. All other conditions of the May 6, 2022 approval remain in effect.

If you have any questions, please call the Technical Reviewer assigned to your facility, Thomas Speight, at 755-2120.

Sincerely,

Dan'el Hall

Solid Waste Chief

Bureau of Waste Prevention

Western Region

#### TBS/tbs

cc: Ware Board of Health Mary LaPlante, DEP WERO (electronic)