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HEALTH DEPARTMENT
SPRINGFIELD, MASS.

THE COMMONWEALTH OF MASSACHUSETTS

Advance Copy 1980 Acts and Resolves

MICHAEL JOSEPH CONNOLLY, State Secretary

Chap. 533. AN ACT CONCERNING THE PUBLIC HEALTH DEPARTMENT OF THE CITY OF SPRINGFIELD.

Be it enacted, etc., as follows:

SECTION 1. Upon acceptance of this act the mayor of the city of Springfield shall appoint a public health council consisting of fifteen members, one member shall be the commissioner of public health, eight members shall be selected from persons who are employed in the planning, administration, education, delivery or financing of health care services or the manufacture or distribution of medical supplies, at least two of whom shall be registered physicians, six members shall be selected from persons who are not employed in, or who do not receive more than ten per cent of their family income from persons employed in the planning, administration, education, delivery or financing of health care services or the manufacture or distribution of medical supplies. The latter six members shall be selected from a broad representation of population groups in the city, based on prevailing categorical distinctions such as neighborhood, ethnic, age, sex, income, or handicapped groupings - taking into consideration the specific populations served by the health department. The mayor shall appoint a chairperson, who shall not be the commissioner, from the members on February first of every other year.

Director

SECTION 2. Members of the public health council, other than the commissioner shall serve for a term of three years and until a successor is appointed and be limited to no more than two consecutive terms in office. The terms of office of the members thereof first appointed shall be arranged so that five members shall be appointed for a one year term, five members shall be appointed for a two year term and four members shall be appointed for a three year term. Upon the qualification of the commissioner first appointed under this act the terms of office of the members of the public health council of said city then in office shall cease.

* SECTION 3. The public health council shall make and promulgate rules and regulations such as boards of health may make under general and special laws. It shall meet for at least ten monthly meetings and as often as otherwise necessary or at the call of the commissioner or chairperson to advise the commissioner on all matters relative to health and sanitation in said city and the administration of the health department and hospitals of said city. It shall provide the mayor with an annual evaluation of the performance of the public health department and the public health commissioner of the city and, after holding a public hearing thereon, shall perform an annual assessment of the health needs of the city of Springfield.

SECTION 4. The commissioner of public health shall be a citizen of the United States and either (a) be a registered physician who shall be specially fitted by education, training, and experience to perform the duties of commissioner of public health; or (b) have a masters degree in public health or a related field from an accredited college or university and three years full time experience in public health administration. In the event the commissioner is not a registered physician, the commissioner shall secure medical consultation where appropriate. The commissioner shall be a voting member of the public health council and shall be a noncivil service employee who shall serve for a term of five years, from January first in the year in which the commissioner is appointed, and until a successor is qualified unless sooner removed in accordance with the city charter.

The entire time of the commissioner shall be devoted to the duties of office. The mayor and the city council shall establish two separate schedules of compensation for the office of commissioner, one of which would reflect a higher rate of compensation if the office is filled by a physician, the other would reflect a lower rate of compensation if the office is filled by a nonphysician.

SECTION 5. The commissioner shall perform the duties, and except as provided in section three, shall have all the powers imposed and conferred upon the board of health of the city of Springfield by general or special laws and such other similar duties as may be prescribed by ordinance. The commissioner shall be the executive officer of the public health department of said city and shall administer in said city the laws relative to health and sanitation and the rules and regulations of the state department of public health and the rules and regulations promulgated by the public health council as hereinbefore provided.

SECTION 6. The commissioner may from time to time employ such assistants as may be required in the performance of the duties of the office of commissioner and the public health department and shall determine their compensation in accordance however with the ordinances of the city and within the appropriation for such department and subject to the approval of the mayor. The commissioner may, subject to the approval of the mayor and the ordinances of the city, expend such sums for labor, materials, services and such incidental expenses as may be necessary for the use of such department; provided however that all such expenditures for employment of assistants and for labor, materials, services and other incidentals shall be limited to the amount actually appropriated by the city council for such department, and such other funds as are received by donation or otherwise with the approval of the city council.

SECTION 7. Such provisions of chapter ninety-four of the acts of eighteen hundred and fifty-two, chapter two hundred sixty-seven of the acts of nineteen hundred and thirty-four and acts in amendment thereof or in addition thereto, and such ordinances of said city, as are inconsistent with this act are

**Public Health Council
CITY OF SPRINGFIELD
Springfield, Massachusetts**

Notice is hereby given that the Public Health Council will hold a public hearing on **Wednesday, January 20, 2016** at 5:30 P.M. at **1840 Roosevelt Avenue (Central High School)**, Springfield, MA for all those interested in the proposal of Palmer Renewable Energy LLC (PRE) to build and operate a 35-megawatt (MW) biomass-fired power plant at the property known as **440 Cadwell Drive/1000 Page Boulevard (02195-0104)** in Springfield.

Based on the information received, and upon advice of the Public Health Council, the activity proposed by PRE may be a “noisome trade” as that term is used in M.G.L. c. 111, § 143.

After the Public Hearing to be held on January 20, 2016, the Director of Public Health, upon the advice of the Public Health Council, may request that PRE submit a site assignment application to the Public Health Council. Thereafter, the Public Health Council will conduct a public hearing in accordance with G.L. c. 111, § 143; Chapter 533 of the Acts of 1980; and Chapter 175 of Article IV of the Ordinances of the City of Springfield.

The purpose of this public hearing is to ensure the public health, safety, welfare and environment will be protected.

BY ORDER OF THE PUBLIC HEALTH COUNCIL

Gloria Wilson, Chairperson

Information may be viewed at the Office of Springfield Department of Health and Human Services
1145 Main Street, Suite 208, Springfield, MA 01103, Phone: 413.787.6741, Fax: 413.787.6458
Mon.-Fri. 8:15 AM-4:30 PM

318 Mass. 276
Supreme Judicial Court of Massachusetts, Middlesex.

CITY OF MALDEN

v.

FLYNN.

May 9, 1945.

*278 were not to be transferred without the approval of the board. Statute 1937, c. 282, also inserted in said c. 111 a new section, 31B, authorizing boards of health to 'make rules and regulations for the control of the removal, transportation or disposal of garbage, offal or other offensive substances,' and provided a penalty for the violation of any such rule or regulation or the provisions of the new section 31A. It follows from these legislative acts that there has been carved out of the general power of boards of health over nuisances, sources of filth and causes of sickness, the power to deal with the collection, removal and transportation of garbage, and the authority of boards over this particular subject matter is now to be determined by the specific legislation covering that subject. However broad and general the language of G.L.(Ter.Ed.) c. 111, § 122, may be in conferring authority upon boards of health to abate nuisances, to eliminate sources of filth and to remove causes of sickness, it cannot rightly be held to apply to the collection and transportation of garbage in so far as the control of this matter is specifically conferred upon the boards by sections 31A and 31B of said c. 111. These last mentioned two sections comprise parts of a single chapter and must be construed, not **110 only with reference to each other but also with reference to the remaining sections in said chapter, as portions of an harmonious and practical system of legislation designed to protect the public health. *Hite v. Hite*, 301 Mass. 294, 17 N.E.2d 176, 119 A.L.R. 517; *Killam v. March*, 316 Mass. 646, 55 N.E.2d 945. While the general authority conferred upon boards of health by section 122 was broad enough to include the collection and transportation of garbage as long as said section stood alone, the subsequent enactments dealing with this particular subject matter limited the scope of section 122, and that section must now be considered to apply only to such cases within its general language as are not within the provisions of these subsequent enactments. *Copeland v. Mayor and Aldermen of Springfield*, 166 Mass. 498, 44 N.E. 605; *Cambridge v. John C. Dow Co.*, 185 Mass. 448, 70 N.E. 447; *Boston & Albany Railroad Co. v. Public Service Commissioners*, 232 Mass. 358, 122 N.E. 384; *McKenna v. White*, 287 Mass. 495, 192 N.E. 84; *Clancy v. Wallace*, 288 Mass. 557, 193 N.E. 546;



THE 189TH GENERAL COURT OF
THE COMMONWEALTH OF MASSACHUSETTS

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PART I ADMINISTRATION OF THE GOVERNMENT

TITLE XVI PUBLIC HEALTH

CHAPTER 111 PUBLIC HEALTH

Section 142B Metropolitan air pollution control district; establishment; composition; powers of department of environmental protection

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Section 142B. There is hereby established a metropolitan air pollution control district, to consist of the territory and waters comprised within the cities and towns of Arlington, Belmont, Boston, Braintree, Brookline, Cambridge, Canton, Chelsea, Dedham, Everett, Lynn, Malden, Medford, Melrose, Milton, Needham, Newton, Peabody, Quincy, Revere, Saugus, Somerville, Stoneham, Wakefield, Waltham, Watertown, Weymouth, Winchester, Winthrop, and Woburn, and such other cities and towns as may, after application for admission to the said district, be admitted thereto by the department; provided, that said district shall at all times be composed of contiguous territory.

The department shall control the pollution of the atmosphere within said district. The department may from time to time, after a public hearing, prescribe and establish, amend or repeal, rules and regulations to prevent pollution or undue contamination of the atmosphere within said district.

Personnel of the department may in the performance of their duties under this section enter and inspect any premises, providing said personnel receive the consent of the owner or person in control of such premises. A court, judge or justice authorized to issue warrants in criminal cases may, upon sworn testimony by said personnel that consent for such entry and inspection has been requested and refused, and upon further sworn testimony either (1) that a reasonable inspection of industrial or commercial premises is necessary to detect, prevent or warn against conduct or conditions which may threaten the public health, comfort and convenience by contributing to air pollution, or (2) that a reasonable nondiscriminatory public health inspection, of which the inspection of the particular premises is a part, has been authorized by the department and is being undertaken to detect, prevent or warn against



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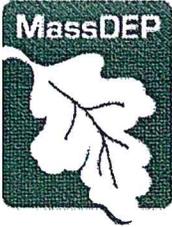
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Section 31C	Atmospheric pollution; regulation and control; publication; hearings; penalties; enforcement; jurisdiction; injunction	PREV	NEXT

Section 31C. A board of health, or other legal authority constituted for such purpose by vote of the town or city council shall have jurisdiction to regulate and control atmospheric pollution, including, but not limited to, the emission of smoke, particulate matter, soot, cinders, ashes, toxic and radioactive substances, fumes, vapors, gases, industrial odors and dusts as may arise within its bounds and which constitutes a nuisance, a danger to the public health, or impair the public comfort and convenience.

Said board of health or other legal authority, subject to the approval of the department of environmental protection, in this section called the department, may from time to time adopt reasonable rules and regulations for the control of atmospheric pollution. Before the board of health or other legal authority submits such rules and regulations to the department for approval, such board or other legal authority shall hold a public hearing thereon, of which notice shall be given by publication for one day in each of two successive weeks in a newspaper published in the town, the first publication to be at least fourteen days prior to the date of the hearing, or if no newspaper is published in such town, by posting a copy of such notice in a public place therein. Said rules and regulations, when approved by the department, and after publication in a newspaper published in the town, or, if no newspaper is published in such town, after posting a copy in a public place, shall have the force of law.

The department shall advise the board or other legal authority in all matters of atmospheric pollution. The department may, upon request of the board of health or other legal authority of



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

DEVAL L. PATRICK
Governor

RICHARD K. SULLIVAN JR.
Secretary

TIMOTHY P. MURRAY
Lieutenant Governor

KENNETH L. KIMMELL
Commissioner

May 16, 2011

Helen R Caulton- Harris, Director
Division of Health Services
City of Springfield
95 State Street
Springfield, Massachusetts 01103

Re: Letter dated March 29, 2011 – Palmer Renewable Energy Project

Dear Director Caulton – Harris,

Thank you for your letter of March 29, 2011 seeking advice from the Department of Environmental Protection (MassDEP) pursuant to MGL c. 111 s. 143 regarding the proposed Palmer Renewable Energy (PRE) project located on 1000 Page Boulevard in Springfield. MassDEP appreciates your concern about the potential impacts this project may have on sensitive populations within the City of Springfield.

Your first question asks for information on the assignment of “noisome trade” sites under MGL C. 111 s. 143. Since the Springfield Division of Health and Human Services (DHHS) is considering jurisdiction over the PRE project under the noisome trade statute, MassDEP recommends that you retain legal assistance to thoroughly examine this question and advise you accordingly. To the best of our knowledge, no wood fueled facility has been regulated under MGL C.111 s. 143 since the adoption of MGL c. 111 142 A – J and its companion regulation at 310 CMR 7:00. With respect to the substance of the “noisome” or nuisance concerns that you have raised in your letter, please note that the MassDEP draft Non- Major Comprehensive Plan Approval (Plan Approval) contains conditions that address these types of “noisome” or nuisance conditions, including odor, noise and fugitive emissions. It is our understanding that issues such as traffic and other potential localized health impacts can be addressed through a Host Community Agreement between the City and PRE.

Your second question asks whether the proposed site satisfies the site suitability criteria cited under MGL C. 111. s.150A. The PRE project as currently proposed plans to use green wood chips, also known as “virgin” or “clean” wood, which are not considered “solid waste” under MassDEP regulations. Therefore, the project would not be subject to this law or its companion regulation at 310 CMR 16.00 because the facility will not be combusting a “solid waste”.

This information is available in alternate format. Call Michelle Waters-Ekanem, Diversity Director, at 617-292-5751. TDD# 1-866-539-7622 or 1-617-574-6868

MassDEP Website: www.mass.gov/dep

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- If no petition is filed, or upon final order of the court, the board should proceed with regard to the farm nuisance as provided in M.G.L. c.111 §§ 122, 123 and 125, or in the order of the court.

BOARD OF HEALTH RESPONSIBILITIES - NOISOME TRADES

The BOH is responsible for assigning sites where “noisome trades” may take place. Noisome trades generally refer to a trade or type of employment which may result in a nuisance or be harmful to the community’s inhabitants or their estates, or which may lead to unpleasant and/or injurious odors. Such businesses include piggeries, slaughterhouses, junk yards, garbage and rubbish collection sites, and chemical plants.

- Assign sites for noisome trades (M.G.L. c. 111 §143). This assignment may only be made after a hearing. This statute expressly states that the operation of a piggery is a noisome trade and requires a site assignment.
- Request consultation and assistance from the Department of Environmental Protection (DEP) (M.G.L. c. 111 §143).
- Record site assignments with the town clerk (M.G.L. c. 111 §143).
- Issue orders of prohibition to any person responsible for the premise where noisome trades are being exercised M.G.L. c.111, §143). The failure to comply with the order within 24-hours will result in a fine of not less than fifty nor more than five hundred dollars. (M.G.L. c. 111 §146).
- If the site assignment subsequently becomes a nuisance, it may be revoked by order of the Superior Court in a complaint of any person.
- Issue annual permits for the removal or transportation of offal, garbage, rubbish or other offensive substances and register persons who transport such waste through the municipality. The board may promulgate appropriate regulations (M.G.L. c. 111 §31A).

STATE RESPONSIBILITIES

- DEP shall advise, upon request by the BOH, the assignment of places for the exercise of a noisome trade. Any person aggrieved by the action of a BOH in assigning certain places for a noisome trade, may appeal to DEP within 60 days of the approval of an assignment.
- DEP may, after a hearing, rescind, modify or amend such assignment (M.G.L. c. 111 §143).
- An appeal of DEP’s order is by petition for a jury in Superior Court (M.G.L. c.111 §147), within three days after service of order.

Petroleum Institute v. Costle, 665 F.2d 1176, 1186 (C.A.D.C. 1981) (“a clear threshold of adverse health effects cannot be identified with certainty for ozone.”). Nevertheless, the threshold should generally be upheld if it is not the result of “sheer guesswork” but rather evidences that the “conclusion as to an adequate margin of safety [is based upon] a reasoned analysis and evidence of risk” American Petroleum Institute v. Costle, 665 F.2d 1176, 1187 (C.A.D.C. 1981).

EPA and others charged with the responsibility of recommending or determining the appropriate threshold have explicitly acknowledged the same type of criticism lodged by Levy. EPA staff concluded that no “discernable thresholds or exposure levels without a potential risk of adverse effect were identified in the assessed epidemiologic studies of fine particulate matter.” This is consistent with CASAC’s findings. Rowan West PFT, p. 4. But that does not lead to the conclusion that PM_{2.5} emission thresholds should be zero or even less than current or recommended thresholds. Instead, EPA has offered rational scientific and policy bases for the NAAQS thresholds. In sum, the scientific evidence is not presently strong enough to support regulating below the recommended NAAQS. EPA identified levels where the “scientific evidence of association is the strongest” between PM levels and adverse health effects (the quantitative estimate of health risk) and where there is “appreciably less confidence” in the estimates of risk because of uncertainties or limitations. Rowan West PFT, p. 4. In the Policy Assessment, EPA specifically found that “recognizing the uncertainties inherent in identifying any particular point at which our confidence in reported associations becomes appreciably less, we conclude that the available evidence does not provide a sufficient basis to consider alternative annual standard levels below 11 µg/m³.” Valberg PFT, p. 3. CASAC, the independent scientific panel mandated by Congress, concurred with the EPA’s assessment that at 10 µg/m³ and lower

riding New York City subways, and (10) smoking one cigarette in a seventy-five year time.

Although these analyses were provided on an individual basis and the PRE plant would expose the public, the analogies are nonetheless relevant to contextualizing and better understanding the relative risks. Indeed, a number of the referenced activities are commonly performed by large segments of the population.

Whether the NAAQS are Representative of the Springfield Area. The Petitioners' argument that MassDEP's reliance on NAAQS does not sufficiently consider the particularly susceptible subpopulations in the area is not persuasive. In order to protect the public health, the Primary NAAQS are designed to be protective of such subpopulations, not simply the average individual, with an adequate margin of safety and without regard to cost. The scientific studies and methodologies used to promulgate the NAAQS consider urban subpopulations with specific susceptibilities like those presented by the Petitioners. See e.g. Policy Assessment, § 2.1.3 (describing study methodology, including urban air studies representative of susceptible urban populations throughout the U.S.); Policy Assessment, § 2.2.1 (same); Policy Assessment, § 2.2.2 (same); Policy Assessment, p. 2-40 (specifically discussing the extent to which the Harvard Six Cities study is representative of susceptible urban populations); Policy Assessment, p. 2-40 (concluding that "study areas are generally representative of urban areas in the U.S. likely to experience relatively elevated levels of risk related to ambient PM_{2.5} exposure."). Without a sufficient showing that the NAAQS are somehow not adequately representative for this appeal, it should be presumed that they are appropriately protective of the public health. This regulatory approach is consistent with how EPA has addressed environmental justice claims arising out of Title VI in PSD appeals.³¹ Although the Petitioners have withdrawn their Title VI claim in this

³¹ See *In re Shell Gulf of Mexico, Inc. and Shell Offshore, Inc.*, OCS Appeal Nos. 10-01 through 10-04, slip. op. at 71-75 (December 30, 2010) (Order Denying Review in Part and Remanding Permits); *In re*



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Section 150. If the order is affirmed by the verdict, the board shall recover costs to the use of the town; if it is annulled and the petitioner has not been specially authorized by said board to exercise such trade or employment during the proceedings, he shall recover damages and costs against the town; if it is annulled and the petitioner has been specially authorized as aforesaid, or if it is altered, he shall not recover damages, and the court may render judgment for costs in its discretion.

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Commonwealth of Massachusetts
County of Bristol
The Superior Court

CIVIL DOCKET# BRCV2000-01257

K.R. Rezendes, Inc., R. Five, Ltd., and Peter D. Borges,
Plaintiff(s)

vs.

The Board of Health of Freetown, John S. Ashley, Lawrence N. Ashley, and Mark A.
Howland as they constitute the Board of Health and the Town of Freetown
Defendant(s)

JUDGMENT ON FINDING OF THE COURT

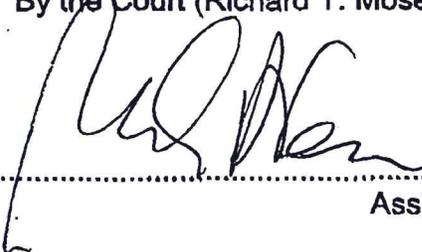
This action came on for trial before the Court, Richard T. Moses, Justice,
presiding, and the issues having been duly tried, and finding having been rendered,

It is ORDERED and ADJUDGED:

- 1.) That plaintiffs K.R. Rezendes, Inc. and R. Five Ltd recover of the defendants \$176,374.35 plus statutory costs and interest as provided by law; and
- 2.) That plaintiff Peter D. Borges recover of defendants \$3,057,288.25 plus statutory costs and interest as provided by law.

Dated at Taunton, Massachusetts this 27th day of May, 2005.

By the Court (Richard T. Moses, Justice)

By: 
Assistant Clerk

Entered: 05/27/2005

Copies mailed 05/27/2005