

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

Office of General Counsel, Region 4  
1130 North Westcott Road, Schenectady, NY 12306-2014  
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**CONFIRMATION BY EMAIL ORDER RECEIVED/REGULAR MAIL**

September 18, 2015

Ms. Virginia c. Robbins, Esq.  
Bond Schoeneck & King Attorneys  
One Lincoln Center  
Syracuse, NY 13202  
[vrobbs@bsk.com](mailto:vrobbs@bsk.com)

Re: Order of Consent  
Town of Colonie  
R4-2015-0708-81

Dear Ms. Virginia:

Enclosed please find a copy of the fully executed Order on Consent referenced above.

Pursuant to Paragraph I payment of \$530,000 is due within 15 calendar days of the effective date of this order.

Sincerely,



Richard Ostrov  
Regional Attorney  
Region 4

Enclosure

ec: Matthew McGarry, P.E., Town of Colonie  
[McGarry@colonie.org](mailto:McGarry@colonie.org)



Department of  
Environmental  
Conservation

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
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In the Matter of the Alleged Violations of  
Environmental Conservation Law  
Article 27, Title 7 by:

ORDER ON CONSENT

File No. R4-2015-0708-81

Town of Colonie  
347 Old Niskayuna Road  
Latham, New York 12110

Respondent  
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WHEREAS:

Jurisdiction

1. The Department of Environmental Conservation (Department) is empowered to regulate the disposal of solid waste and permit the operation of landfills pursuant to Article 27, Title 7 of the Environmental Conservation Law (ECL).

Respondent

2. Respondent, Town of Colonie, owns the Town of Colonie Landfill Facility (landfill) at 1319 Loudon Road, Colonie, New York 12047 that is subject to Solid Waste Management Permit No. 4-0126-00033-00001 that was last modified on August 31, 2013 with an expiration date of December 31, 2017 (permit modification).

3. The landfill is currently operated and has been since September 19, 2011 by Capital Region Landfills, Inc. (CRL). CRL is a subsidiary of Waste Connections, Inc.

Town of Colonie Solid Waste Management Unit

4. The New York Solid Waste Management Act of 1988 requires solid waste planning units and Local Solid Waste Management Plans (SWMP). The localities are to employ "sound principles of solid waste management, natural resources conservation, energy production, and employment creating opportunities." ECL Section 27-0107(1) (c).

5. The Town of Colonie Solid Waste Management Planning Unit includes the Town of Colonie, Village of Menands, Village of Colonie and City of Cohoes.

### Beneficial Use Determinations and Alternative Daily Cover Material

6. In accordance with 6 NYCRR 360-1.15(b) (10) and 360-2.17(c), the Department has approved Respondent's use of alternative daily cover (ADC) for petroleum contaminated soils, municipal incinerator ash and auto shredder fluff. The regulatory objective as stated in 6 NYCRR 360-2.9(h) for the Department's approval of ADC is to conserve both natural resources and landfill airspace provided that litter and odors and waste mass stability are not adversely affected by the use of the ADC.

### Landfill Permit Limits on Receipt and Disposal of Solid Waste

7. Permit Section "Operations" Paragraph 15 (Waste Tonnage Limits) provides that:

*"a maximum of 820 tons per operating day (based on a 25 operating day rolling average) of waste is authorized to be received and disposed of in the landfill, providing that on an annual basis, no more than 255,840 tons per year of waste is received and disposed of in the landfill".*

### 2014 Landfill Annual Report

8. The Respondent's 2014 landfill annual report dated February 27, 2015 was received by the Department on March 2, 2015. The Department acknowledges that Respondent also submitted landfill annual reports in prior years.

9. In 2014, Respondent reported accepting and disposing of 254,238 tons of solid waste at the landfill.

10. In 2014, Respondent reported accepting and using 214,521 tons of ADC which is equal to 84% by weight of the solid waste disposed of at the landfill.

### Daily and Annual Tonnage Limits

11. Pursuant to 6 NYCRR Part 360-1.7(a)(1): "No person shall construct or operate a solid waste management facility, or any phase of it, except in accordance with a valid permit issued pursuant to this part.

12. Paragraph 14 of the permit requires Respondent to comply with all requirements identified in 6 NYCRR 360-1.14 (Operational requirements for all Solid Waste Management Facilities).

13. Paragraph 9 of the permit requires that:

*“All activities authorized by this permit must be in strict conformance with the permit application, plans and materials prepared by Applicant on the dates described in the Approved Plans Conditions”.*

14. The August 22, 2013 O&M Plan at Section 8.3.2 states:

*“Ash, used as a replacement for soil, will behave in a manner similar to soil. Therefore, the use of ash as a replacement for soil as a daily cover will not have in impact on landfill operations. Ash will be placed in a 6-inch lift the same as soil.”*

15. The August 22, 2013 O&M Plan is incorporated by reference into the permit and made enforceable thereunder by Paragraph 10(a) “Approved Documents and Wastes”.

16. Paragraph 15 of the permit sets an 820 ton and 255,840 ton limit on daily and annual acceptance and disposal of solid waste at the landfill, respectively.

17. Respondent accepted 214,521 tons of ADC for its 312 days of operation in 2014 which averages to 688 tons per day.

18. The Department alleges that Respondent’s acceptance of 688 tons per day of ADC exceeds the amount of daily cover specified in the approved permit application and required under applicable solid waste regulation.

19. The Department alleges that any approved ADC material accepted at the landfill that exceeds the permitted daily cover amount specified in the approved permit application is considered a solid waste and counted against the daily and annual solid waste limits in Paragraph 15 of the permit.

20. The Department alleges that the total of solid waste, and ADC material that exceeded the permitted daily cover amount, accepted at the landfill in 2014 exceed both the daily and annual maximum solid waste limits in Paragraph 15 of the permit.

21. The Department alleges that Respondent violated Paragraph 15 of the permit and 6 NYCRR Part 360-1.7(a) (1) by accepting and disposing of solid waste in excess of its daily and annual solid waste limits.

22. Respondent has informed the Department that it will be indemnified by Capital Region Landfills, Inc. for the civil penalty assessed in this Order pursuant to the Solid Waste Facility Operating Agreement between the Respondent and Capital Region Landfills, Inc., dated August 4, 2011.

#### Civil Penalty

23. ECL Section 71-2703 provides that: "any person who violates any of the provisions of, or who fails to perform any duty imposed by title 3 or 7 of article 27 of this chapter or any rule or regulation promulgated pursuant thereto, or any term or condition of any certificate or permit issued pursuant thereto, or any final determination or order of the commissioner made pursuant to this title shall be liable for a civil penalty not to exceed seven thousand five hundred dollars for each such violation and an additional penalty of not more than one thousand five hundred dollars for each day during which such violation continues.

#### Waiver of Hearing

24. Respondent, without admitting to any of the facts and violations in this Order on Consent, affirmatively waived its right to notice and hearing in the manner provided by law, and has consented to the issuing and entering of this Order on Consent and agrees to be bound by the terms, provisions and conditions contained herein.

**NOW**, having considered this matter and being duly advised, it is **ORDERED** that:

I. Civil Penalty - In respect to the aforesaid alleged violations, a civil penalty in the amount of FIVE HUNDRED THIRTY THOUSAND DOLLARS (\$530,000) is assessed against the Respondent. Payment of the civil penalty is due within 15 calendar days of the effective date of this Order.

II. Schedule of Compliance and Submittals - Respondent shall comply with the Order on Consent's Schedule of Compliance and all Department approved submittals from Respondent which are incorporated and made part of this Order.

III. Settlement - Timely payment of the civil penalty and compliance with the terms and conditions of this Order and Schedule of Compliance are accepted as full civil settlement of all daily and annual solid waste tonnage permit limit violations prior to the effective date of this Order.

IV. Effective Date - The effective date of this Order on Consent shall be the date upon which it is signed on behalf of the Department.

V. Communications - All communications required herein shall be made to: Department -- DEC Region 4, 1130 North Westcott Road, Schenectady, NY 12306, and Attn: Regional Engineer; and Respondent – Town of Colonie – Attn: Landfill Operations, 347 Old Niskayuna Road, Latham, New York 12110.

VI. Access - Respondent shall allow duly authorized representatives of the Department and New York State access to the site without prior notice at such times as may be desirable or necessary to inspect and determine the status of Respondent's compliance with this Order and the ECL and regulations promulgated there under.

VII. Summary Abatement - This Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

VIII. Indemnification - Respondent shall indemnify and hold Department, New York State, and their representatives and employees harmless for all claims, suits, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of the provisions hereof by Respondent, its directors, officers, employees, servants, agents, successors or assigns.

IX. Entire Agreement; Modification - This Order constitutes the entire agreement of the parties, and no provision of the agreement shall be deemed waived or otherwise modified except as is specifically set forth in a writing executed by the Commissioner or Regional Director of Department indicating an intent to modify this Order.

X. Document Reviews

1. All documents which Respondent must submit pursuant to this Order are subject to Department approval.

2. The Department shall review each of the submittals Respondent makes pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order; and Respondent shall implement them in accordance with their respective schedules and terms, as approved.

3. a. If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within the time frame set forth in that written notification, Respondent shall make a revised submittal to the Department

that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

b. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the revised submission is not approvable as submitted, the Department, at its option, may disapprove it or may approve it on condition that Respondent accept such modifications as may be specified by Department to make it approvable. If Respondent does not accept such modifications, the revised submission will be disapproved. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

c. Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary. The Department agrees that any modifications it specifies will be reasonable and consistent with customary engineering standards.

XI. Termination - This Order shall terminate upon the Department's determination that Respondent has complied with all the terms, conditions and provisions of this Order and Schedule of Compliance.

DATED: Rotterdam, New York  
September 21 2015

Marc Gerstman  
Acting Commissioner  
New York State Department of  
Environmental Conservation

BY:

  
Keith Goertz  
Regional Director  
Region 4

CONSENT BY RESPONDENT

Town of Colonie

Respondent, Town of Colonie, hereby consents to the issuing and entering of this Order on Consent and waives his right to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

BY: Paula A. Mahan  
Supervisor, Town of Colonie

DATE: 9/18/15

STATE OF NEW YORK )  
 )ss.:  
COUNTY OF )

On the 18<sup>th</sup> day of SEPTEMBER in the year 2015 before me, the undersigned, a Notary Public in and for the State, personally appeared PAULA A. MAHAN, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual executed the instrument.

[Signature]  
Notary Public  
Qualified in the County of:  
My Commission Expires:

JOHN A. SPATH  
Notary Public, State Of New York  
No. 02SP6176883 ALBANY  
Qualified In Rensselaer County  
Commission Expires ~~10/30/20~~  
4/20/2016

## Schedule of Compliance

A. As of the effective date of this Order through December 31, 2015, Respondent's acceptance of ADC at the landfill in excess of 55% by weight of the daily (based on a 25 operating day rolling average) solid waste tonnage accepted shall be counted towards the daily and/or annual solid waste tonnage limits.

B. Effective on January 1, 2016 and thereafter, Respondent's acceptance of ADC at the landfill in any calendar month that exceeds 25% by weight of the solid waste tonnage accepted in the previous calendar month shall be counted towards the daily and/or annual solid waste tonnage limits. The Department will modify the permit to include the 25% limit on ADC consistent with this Paragraph B. Respondent waives any and all rights to contest in any manner this permit modification only, including a request for a hearing under 6 NYCRR Part 621,<sup>1</sup> but this waiver by Respondent shall not apply to any other permit modification.

- For example, assuming the landfill receives solid waste at the permitted daily and annual tonnage limits, if more than 205 tons per day (based on a calendar month averaging period) and/or more than 63,960 tons per year of ADC is accepted and applied at the landfill, the excess shall be added to the amount of solid waste accepted and will be counted towards the landfill's daily and/or annual solid waste limit.

C. Respondent shall submit monthly ADC reports to the Department by the 7<sup>th</sup> calendar day of the calendar month following the monthly reporting period. The reports shall include the amount of ADC and solid waste accepted for each reporting period and a running total of solid waste and ADC accepted for each monthly reporting period during the calendar year. The first monthly reporting period under this Order shall begin on the first day of the first full calendar month after the effective date of this Order.

D. The following sentence in Section 8.3.2 of Respondent's August 22, 2013 O&M Plan: "Ash will be placed in a 6-inch lift the same as soil." is hereby deleted because Respondent is now subject to the limits set forth in Paragraphs A and B above, and it shall apply daily cover material, including ADC used for daily cover material, in compliance with the requirements in 6 NYCRR Section 360-2.17(c).

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<sup>1</sup> The Respondent agrees to be bound by any new 6 NYCRR Part 360 final regulation that sets an ADC limit by weight of the daily and/or annual solid waste accepted. The new regulatory limit shall supersede the 25% limit in this Schedule of Compliance attached to the Order on Consent.