

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
STATE SUPERFUND PROGRAM
ECL § 27-1301 *et seq.*

In the Matter of a Remedial Program for

**ORDER ON CONSENT AND
ADMINISTRATIVE SETTLEMENT**

DEC Site Name: Hurley Town Landfill

DEC Site No.: 356062

Index No. CO 3-20211220-61

Site Address: 1043 Dug Hill Road
West Hurley, NY, 12491

Hereinafter referred to as "Site"

By: Town of Hurley

Hereinafter referred to as "Respondent"

1. A. The New York State Department of Environmental Conservation ("Department") is responsible for inactive hazardous waste disposal site remedial programs pursuant to Article 27, Title 13 of the Environmental Conservation Law ("ECL") and Part 375 of Title 6 of the Official Compilation of Codes, Rules and Regulations ("6 NYCRR") and may issue orders consistent with the authority granted to the Commissioner by such statute.

B. The Department is responsible for carrying out the policy of the State of New York to conserve, improve, and protect its natural resources and environment and control water, land, and air pollution consistent with the authority granted to the Department and the Commissioner by Article 3, Title 3 of the ECL.

C. This Order is issued pursuant to the Department's authority under, *inter alia*, ECL Article 27, Title 13 and ECL § 3-0301, and resolves Respondent's liability to the State as provided at 6 NYCRR 375-1.5(b)(5).

2. The Site is not currently listed in New York State's *Registry of Inactive Hazardous Waste Disposal Sites*, and is instead identified as a "P" or potential site, with Site Number of 356062.

3. Respondent consents to the issuance of this Order without (i) an admission or finding of liability, fault, wrongdoing, or violation of any law, regulation, permit, order, requirement, or standard of care of any kind whatsoever; (ii) an acknowledgment that there has been a release or threatened release of hazardous waste at or from the Site;

and/or (iii) an acknowledgment that a release or threatened release of hazardous waste at or from the Site constitutes a significant threat to the public health or environment.

4. Respondent and the Department agree that the primary goals of this Order are to appropriately characterize the contamination at the Site and provide a mechanism for Respondent to implement any necessary interim remedial measures and associated site management.

5. Solely with regard to the matters set forth below, Respondent hereby waives any right to a hearing as may be provided by law, consents to the issuance and entry of this Order, and agrees to be bound by its terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms or the validity of data submitted to the Department by Respondent pursuant to this Order.

NOW, having considered this matter and being duly advised, **IT IS ORDERED THAT:**

I. Real Property

The Site subject to this Order has been assigned Site Number 356062. It consists of approximately 13.01 acres, and is as follows:

Subject Property Description (A Map of the Site is attached as Exhibit "A")

Tax Map/Parcel Nos.: 47.1-3-19
47.1-3-15

Address: 103 Dug Hill Road
West Hurley, NY, 12491

Owner: Town of Hurley

II. Initial Work Plans

A. Site Characterization Initial Work Plan shall be submitted to the Department by the Respondent within sixty (60) days after the effective date of this Order.

B. If determined necessary by the New York State Department of Health (DOH), Respondent shall develop and implement one or more Interim Remedial Measure (IRM) Work Plans for protection and/or provision of potable water at and in the vicinity of the Site. The required scope of any IRM(s) under this paragraph shall be determined by the Department in consultation with DOH. Any such IRM Work Plan

shall be submitted to the Department by the Respondent for approval within sixty (60) days after it is requested in writing by the Department. If, at any point during the Site Characterization, the Department determines that the Site is not a source of contamination, Respondent reserves the right to request the Department's authorization to cease provision of potable water under the IRM Work Plan.

III. Payment of State Costs

Invoices shall be sent to Respondent at the following address:

Melinda McKnight, Town Supervisor
Town of Hurley
10 Wamsley Place
Hurley, NY 12443
mmcknight@townofhurley.org

Past State Costs incurred prior to the effective date of this Consent Order are set forth on Exhibit "C." The State is not seeking recovery of Past State Costs at this time, and it reserves its rights to seek full reimbursement for Past State Costs from Respondent as provided by 42 U.S.C. 9607, the ECL, the New York State Finance Law, and any other applicable provision of state and/or federal law.

IV. Communications

A. All written communications required by this Consent Order shall be transmitted by United States Postal Service, by private courier service, by hand delivery, or by electronic mail.

1. Communication from Respondent shall be sent to:

Brittany O'Brien-Drake, DEC Project Manager
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, N.Y. 12233
brittany.obrien-drake@dec.ny.gov

James Sullivan, Public Health Specialist, Project Manager (electronic copy only)
New York State Department of Health
Center for Environmental Health
Empire State Plaza
Corning Towner
Albany, NY 12237

james.sullivan@health.ny.gov

Phoebe Gittelson, Excelsior Fellow (correspondence only)
New York State Department of Environmental Conservation
Office of General Counsel
625 Broadway, 14th Floor
Albany, NY 12233
phoebe.gittelson@dec.ny.gov

Jennifer Andaloro, Section Chief (correspondence only)
New York State Department of Environmental Conservation
Office of General Counsel
625 Broadway, 14th Floor
Albany, NY 12233
jennifer.andaloro@dec.ny.gov

2. Communication from the Department to Respondent shall be sent to:

Melinda McKnight, Town Supervisor
Town of Hurley
10 Wamsley Place
Hurley, NY 12443
mmcknight@townofhurley.org

David K. Gordon, Esq.
Attorney for the Town of Hurley
Gordon & Svenson LLP
42 Catharine Street, Suite C-106
Poughkeepsie, NY 12601
(845) 470-2027
david@gordonsvenson.com

B. The Department and Respondent reserve the right to designate additional or different addressees for communication on written notice to the other. Additionally, the Department reserves the right to request that Respondent provide one or more paper copies of any work plan or report.

C. Each party shall notify the other within ninety (90) days after any change in the addresses listed in this paragraph or in Paragraph I.

V. Certificate of Completion/No Further Action/Satisfactory Completion

Upon the Department's issuance of a Certificate of Completion as provided at 6 NYCRR 375-1.9 and 375-2.9, Respondent shall obtain the benefits conferred by such provisions, subject to the terms and conditions described therein. However, if, after the completion of any required investigations and/or interim remedial actions, the Department determines that the Site will not be listed in the *Registry of Inactive Hazardous Waste Disposal Sites in New York State*, the Department will not issue a Certificate of Completion but will issue a No Further Action/Satisfactory Completion Letter to Respondent reflecting the Department's determination that, other than implementation of a Site Management Plan if required, no further remedial action at the Site is presently necessary. The Letter's form and substance shall be materially similar to the attached Exhibit D.

VI. Miscellaneous

A. Appendix A - "Standard Clauses for All New York State, State Superfund Orders" is attached to and hereby made a part of this Order as if set forth fully herein.

B. In the event of a conflict between the main body of this Order (including any and all attachments thereto and amendments thereof) and the terms of Appendix A, the main body of this Order shall control.

C. The effective date of this Order is the 10th day after it is signed by the Commissioner or the Commissioner's designee.

DATED:

02/07/2022

BASIL SEGGOS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By: *Susan Edwards*

Susan Edwards, as Acting Director
Division of Environmental Remediation

CONSENT BY RESPONDENT

Index number: CO 3-20211220-61

Respondent, Town of Hurley, hereby consents to the issuance of the foregoing order without further notice, waives its right to a hearing herein, and agrees to be bound by the terms, provisions, and conditions contained herein.

Town of Hurley

By [Signature]: Melinda McKnight

Name [Print]: MELINDA MCKNIGHT

Title: SUPERVISOR

Date: JANUARY 27, 2022

Email: SUPERVISOR

Acknowledgment

STATE OF NEW YORK)

) ss:

COUNTY OF)

On the 27 day of January in the year 2022, before me, the undersigned, personally appeared Melinda McKnight, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Judith S. Mayhon
Notary Public

JUDITH S. MAYHON
NOTARY PUBLIC STATE OF NEW YORK
NO 01MA6095585
QUALIFIED IN ULSTER COUNTY
COMMISSION EXPIRES JULY 14, 2023

If you are unable to secure notarization, you must sign the statement below.

In signing this document, I acknowledge under penalty of perjury that I understand the contents and purpose of this document; the signature above is my own and I signed willingly. I have also submitted state-issued identification verifying my identity. I am aware that any false statement made herein is punishable as a class A misdemeanor pursuant to section 210.45 of the Penal Law of the State of New York.

Signature

Printed name

CONFIDENTIALITY AGREEMENT

Agreement made as of the 27 day of January, 2021, between Town of Hurley ("Recipient") and the New York State Department of Environmental Conservation (DEC).

DEC agrees to provide Recipient with access to Confidential Information, limited to the results of sampling in connection with contamination believed to be associated with the Hurley Town Landfill site (DEC Site no. 356062) in the Town of Hurley, in accordance with the following conditions:

(A) Purpose

(1) The Parties believe that allowing Recipient to access the results of soil, groundwater, surface water, biota and private well sampling in the vicinity of the Hurley Town Landfill site will facilitate the design and implementation of a remedial program.

(2) The parties are entering into this agreement for the purpose of ensuring that Recipient is provided with the opportunity to review and incorporate all relevant and available data to identify contamination, without compromising the confidentiality of personally identifiable information.

(B) Definitions

(1) the term "Confidential Information" shall mean all written material, regardless of whether it is or is not marked as confidential, related to the results of soil sampling, surface water sampling, biota sampling and/or private well sampling conducted by the Department in the vicinity of the Hurley Town Landfill site.

(2) the term "De-identified Information" shall mean Confidential Information for which there is no reasonable basis to believe that the information could be used to identify an individual and for which the risk is very small that the information could be used, alone or in combination with other reasonably available information, by an anticipated recipient to identify any individual who is a subject of the information. Confidential Information shall only be considered de-identified upon written verification by the DEC.

(3) the term "Identifiable Information" shall mean Confidential Information that is not De-identified Information.

(C) Subject to the provisions of this Agreement, Recipient will have access to Confidential Information solely for the purposes of identifying the nature and extent of contamination at and in the vicinity of the Hurley Town Landfill site and designing and implementing a remedial program.

(D) Confidential Information: (1) May be disseminated by Recipient solely to its employees and agents, including attorneys and consultants, solely to assist with the purposes described in paragraph (A) and (C) above;

(2) Shall not be disseminated by Recipient to any other third party or the public, except as otherwise provided herein or as expressly approved by DEC; and

(3) Shall be appropriately safeguarded, using commercially reasonable best efforts to protect the confidentiality thereof, including without limitation, efforts commensurate with those it employs for the protection of its own confidential and proprietary information.

(E) Confidential Information shall be treated in the following manner:

(1) Recipient will abide by all federal and State laws, rules and regulations regarding confidentiality that are applicable to the records of DEC, including but not limited to Article 6-A of the Public Officers Law (Personal Privacy Protection Act);

(2) No Identifiable Information, as defined in this Agreement, shall appear in any report or any other written or non-written material produced by Recipient that is to be made available to the public or any other third party without prior written approval of DEC;

(3) Recipient shall be permitted to disclose De-Identified Information as defined herein;

(4) Recipient will restrict access to Confidential Information to those employees and agents of Recipient whose responsibilities cannot be accomplished without such access;

(5) Recipient shall, within twenty-four (24) hours, advise (unless legally prohibited from doing so), DEC of any subpoena, investigative demand or other legal process served upon it which requests or demands the production of Confidential Information, and shall allow DEC to present reasons to the Recipient and in any judicial proceeding as to how disclosure would not appropriate pursuant to law;

(6) In the event that there is any unauthorized disclosure or loss of Confidential Information by Recipient, Recipient shall immediately notify DEC in writing. Such notice shall clearly describe the scope of Confidential Information affected by the unauthorized disclosure or loss, shall list all persons who may have gained access to the Confidential Information as a result of the unauthorized disclosure, and shall describe how the

unauthorized disclosure or loss occurred. Recipient shall provide DEC with any additional information that DEC requests relating to the unauthorized disclosure or loss. DEC reserves any rights it may have under state and federal law to take any appropriate action in the event of unauthorized disclosure or loss of Confidential Information; and (7) In the event this Agreement is terminated for any reason, the confidentiality provisions set forth in this Agreement shall continue to apply to any

Confidential Information received pursuant to this Agreement, including the protections of the laws set forth in paragraph (E)(1).

(F) Notwithstanding any other provision of this Agreement, Recipient shall not be required to maintain as confidential or be restricted in its use of any Confidential Information which (a) was publicly known at the date of disclosure, (b) was in the possession of or known by Recipient or its Representatives prior to receipt, or verbal communication from DEC, other than as a result of a breach of this Agreement or (c) is obtained by Recipient or its Representatives from a source other than DEC after receipt, or verbal communication, from DEC.

(G) The parties hereto may amend this Agreement only be an instrument in writing signed by all parties hereto.

(H) This Agreement constitutes the entire agreement and understanding between DEC and Recipient, and no representations or promises have been made that are not fully set forth herein.

(I) This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which taken together will constitute one and the same instrument. Either party may execute this Agreement by facsimile signature and the other party will be entitled to rely on such facsimile signature as conclusive evidence that this Agreement has been duly executed by such party.

IN WITNESS WHEREOF, the parties hereto have caused this confidentiality agreement to be executed by their duly authorized representatives as of the date and year herein subscribed.

Town of Hurley

By: *Nelene McKnight*

Title: *Supervisor*

Date: *January 27, 2022*

New York State Department of

Environmental Conservation

By: *Susan Edwards*

Title: *Division Director (Acting)*

Date: *February 7, 2022*