

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Alleged Violations  
of Article 27 of the New York State  
Environmental Conservation Law,  
and Title 6, Part 360  
et seq. of the Official  
Compilation of Codes, Rules and  
Regulations of the State of New York,

**ORDER ON CONSENT**

File No.R4-2008-1126-169

- by -

Town of Bethlehem

Respondent

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**WHEREAS:**

**Jurisdiction**

1. The Department of Environmental Conservation ("DEC" or "the Department") is an executive department of the State of New York with jurisdiction over the environmental policy and laws of this state, pursuant to, inter alia, ECL § 3-0301. In particular, DEC has jurisdiction over the permitting and operation of solid waste management facilities pursuant to Article 27 of the New York State Environmental Conservation Law (ECL).

2. Pursuant to authority granted to the Department under ECL Article 27, rules respecting the permitting, registration and operation of solid waste management facilities were promulgated at Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR), Part 360 et seq.

3. Respondent, Town of Bethlehem, is a municipality of the State of New York. Respondent operated a landfill located at Rupert Road in the Town of New Bethlehem, Albany County, ("site") and is a "person," as defined in 6 NYCRR § 360-1.2(b)(108). Respondent's mailing address is 445 Delaware Ave, Delmar, NY 12054.

4. Respondent was originally permitted to operate a construction and demolition ("C&D") debris landfill on October 14, 1986.

5. On May 23, 1991 and January 10, 1997, Respondent submitted to the Department, permit renewals to operate the existing C&D debris landfill on Rupert Road. A permit was never granted.

6. Regulations at 6 NYCRR §360-1.7 (a)(1)(i) provide that:

*“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”*

7. Respondent violated regulations at 6 NYCRR §360-1.7 (a)(1)(i) by operating a C & D landfill without a permit.

8. Regulations at 6 NYCRR §360-7.3(b)(7)(i) for C&D debris landfills consisting of 3 acres or less provide that:

*“The base system must consist of at least two feet of soils having a coefficient of permeability of  $1 \times 10^{-5}$  centimeters per second or less. The project engineer must ensure that the base installation conforms with the following minimum requirements:*

*I.(i) If in situ soils are to comprise the base, the project engineer must demonstrate the coefficient of permeability of those soils to be  $1 \times 10^{-5}$  centimeters per second or less, with one permeability test performed on every acre of landfill area. The results of these tests must be submitted to the department as part of the engineering report.”*

9. Respondent violated regulations at 6 NYCRR §360-7.3(b)(7)(i) by failing to demonstrate that the in situ soils meet the criteria set forth in the regulation.

### **General**

10. ECL § 71-2703 provides that any violator of Articles 3 or 7 of the provisions of Article 27 of the ECL cited in this Order, or any rule or regulation issued pursuant thereto, is subject to penalties of up to Seven thousand five hundred dollars (\$7,500) for each violation and an additional penalty of not more than \$1,500 per day during which the violation continues and may be enjoined from continuing such violation.

11. Respondent consents to the issuance and entry of the foregoing Order, waives the right to a hearing herein as provided by law, and agree to be bound by the provisions, terms and conditions contained in this Order.

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

#### **I. PENALTY**

Respondent is assessed a civil penalty in the amount of SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500). The entire penalty shall be suspended, and shall not be payable, provided that Respondent complies with the requirements in the Schedule of Compliance.

In the event that the Respondent fails to fully comply with the requirements in the Schedule of Compliance, the entire portion of the suspended penalty shall become due and payable upon written notice to Respondent without prejudicing the Department from seeking further appropriate penalties and relief for violations of this Order by Respondent. Respondent shall deliver the suspended penalty amount to the Department within ten business days after receipt of such written notice to the Respondent.

## II. **SETTLEMENT and RESERVATION OF RIGHTS**

A. Upon completion of all obligations created in this Order, this Order settles only all claims for civil and administrative penalties concerning the violations described in Paragraphs 4 through 7 of this Order against Respondent and its successors (including successors in title) and assigns.

B. Except as provided in Subparagraph II A of this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting any of the civil, administrative, or criminal rights of the Department or of the Commissioner or his designee (including, but not limited to, nor exemplified by, the rights to recover natural resources damages and to exercise any summary abatement powers) or authorities with respect to any party, including Respondent.

## III. **FAILURE, DEFAULT AND VIOLATION OF ORDER**

A. Respondent's failure to comply with any provision of this Order shall constitute a default and a failure to perform an obligation under this Order and shall be deemed to be a violation of both this Order and the ECL.

B. Respondent's failure to comply fully and in timely fashion with any provision, term, or condition of this Order shall constitute a default and a failure to perform an obligation under this Order and under the ECL and shall constitute sufficient grounds for revocation of any permit, license, certification, or approval issued to Respondent by the Department.

## IV. **SCHEDULE OF COMPLIANCE**

The attached Schedule of Compliance and any plans approved thereunder are incorporated into the Order on Consent and enforceable thereunder.

## V. **FORCE MAJEURE**

If Respondent can not comply with a deadline or requirement of this Order, because of an act of God, war, strike, riot, catastrophe or other condition which is not caused by the negligence or misconduct of Respondent and which could not have been avoided by Respondent through the exercise of due care, Respondent shall make its best effort to comply nonetheless and shall, within seventy-two hours (unless notice is required sooner by State or Federal law), notify the Department by telephone and in writing, pursuant to the communications provision of this Order,

after it obtains knowledge of any such condition or event and request an appropriate extension or modification of this Order.

#### **VI. REPORTS**

All reports required by this Order shall be made to the Region 4 Office of DEC, 1130 North Westcott Road, Schenectady, NY 12306, Attn: Regional Solid Waste Engineer.

#### **VII. ACCESS**

For the purpose of monitoring or determining compliance with this Order, employees and agents of the Department shall be provided access to any facility, site or records owned, operated, controlled or maintained by Respondent, in order to inspect and/or perform such tests as the Department may deem appropriate, to copy such records, or to perform any other lawful duty or responsibility.

#### **VIII. BINDING EFFECT**

The provisions of this Order shall inure to the benefit of and be binding upon the Department and Respondent and its successors (including successors in title) and assigns.

#### **IX. REVIEW OF SUBMITTALS**

A. 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.

B. 2. 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.

X. **INDEMNIFICATION**

Respondent shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent and its successors (including successors in title) and assigns.

XI. **EFFECTIVE DATE**

The effective date of this Order is the date that the Commissioner or his designee signs it. The Department will provide Respondent (or the Respondent's counsel) with a fully executed copy of this Order as soon as practicable after the Commissioner or his designee signs it.

XII. **MODIFICATION**

No change in this Order shall be made or become effective except as set forth by a written order of the Commissioner.

XIII. **ENTIRE ORDER**

The provisions of this Order constitute the complete and entire Order issued to the Respondent concerning resolution of the violations identified in Paragraphs 4 through 6 of this Order. No term, condition, understanding or agreement purporting to modify or vary any term hereof shall be binding unless made in writing and subscribed by the party to be bound, pursuant to Paragraph XII of this Order. No informal oral or written advice, guidance, suggestion or comment by the Department regarding any report, proposal, plan, specification, schedule, comment or statement made or submitted by Respondent shall be construed as relieving Respondent of its obligations to obtain such formal approvals as may be required by this Order.

DATED: , 2009  
Rotterdam, New York

Alexander B. Grannis  
Commissioner  
New York State Department of  
Environmental Conservation

BY:

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Eugene J. Kelly  
Regional Director  
Region 4



## **SCHEDULE OF COMPLIANCE**

1. Within 90 days of the effective date of this Order, Respondent shall submit to the Department for approval, a closure design for the construction and demolition debris landfill located on Rupert Road in the Town of Bethlehem which meets the specifications set forth in 6 NYCRR Part 360-7.3 (b)(9). As close as possible, given conditions at the time of closure, contours should reflect those indicated on the Draft "Revised proposed Grading Plan" prepared by Barton and Lojudice , P.C., Project No. 858.016.
2. Closure must be completed by May 30, 2010. Respondent may request in writing an additional period of 30 days to complete the requirements of this Paragraph if based on good cause. The extension of time, if granted by Regional Engineer in writing, shall be immediately enforceable under this Order on Consent.
3. Within 45 days of substantive completion of closure construction, the Town must submit to the Department, a construction certification report which describes the closure cap in adequate detail to demonstrate that it satisfies the requirements of 6 NYCRR Part 360-7.3 (b) (9). The certification report must be submitted under the signature and stamp of an engineer licensed to practice engineering in New York State.
4. By November 30, 2009, Respondent shall complete placement of a barrier layer in accordance with regulations at NYCRR 360-7.3(b)(9).
5. By May 30, 2010, Respondent shall complete remainder of closure components.