

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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www.dec.ny.gov

CONFIRMATION BY EMAIL ORDER RECEIVED

February 11, 2019

Kevin Bernstein, Esq.
Bond, Schoeneck & King PLLC
One Lincoln Center
110 West Fayette Street
Syracuse, NY 13202-1355
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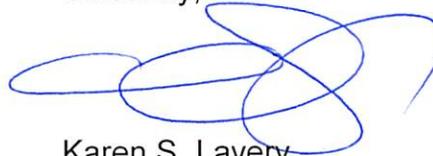
Re: Order on Consent
R4-2018-1002-195
Capital Region Landfills, Inc.

Dear Mr. Bernstein:

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

This will also acknowledge receipt of \$20,000.00 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery
Regional Attorney
Region 4

Enclosure

ec: D. Thorsland
V. Schmitt
J. Whitcomb



Department of
Environmental
Conservation

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Violations of
Environmental Conservation Law
Articles and 17, and applicable regulations:

ORDER ON CONSENT

-by-

File No. R4-2018-1002-195

Capital Region Landfills, Inc.
80 State Street
Albany, New York 12207

Respondent

WHEREAS:

Jurisdiction

1. The Department of Environmental Conservation ("Department" or "DEC") is an Agency of the State charged with jurisdiction over the protection of water quality of the State pursuant to Article 17 of the Environmental Conservation Law ("ECL") and the rules and regulations promulgated thereto.

Respondent

2. Capital Region Landfills Inc. ("CRL"), has been operating the Colonie landfill located at 1319 Loudon Road, Cohoes, NY, since September 19, 2011 and has permit coverage under the MSGP (Permit No. NYR00D652) which also provides permit coverage for construction activities at the landfill (Sector L) per the MSGP, Part I. B 1. d. of GP-0-17-004 and Part I. D. 4. of GP-0-12-001.

Facts

3. On July 20, 2018, construction activity commenced at the landfill for the purpose of expansion.

Violations of Laws and Respondent's MSGP

4. On August 3, 2018 and September 13, 2018, Department staff observed turbid discharges to waters of the state causing visible contrast to natural conditions.

5. ECL Section 17-0501 provides that "*It shall be unlawful for any person, directly or indirectly, to throw, drain, run or otherwise discharge into such waters organic or inorganic matter that shall cause or contribute to a condition in contravention of the standards adopted by the department pursuant to section 17-0301.*"

6. Regulations at 6 NYCRR 703.2 provide that any increase that will cause a substantial visible contrast to natural conditions is a violation.
7. Respondent's MSGP states in Part II. C. 1. c. of GP-0-17-004, that in all cases, any discharge which contains a visible sheen, foam, or odor or may cause or contribute to a violation of water quality is prohibited. Similar language is also found in Part I. B. 2. A. of GP-0-12-001.
8. The turbid discharges to waters of the state causing visible contrast to natural conditions which were observed by Department staff on August 3, 2018 and September 13, 2018 is a violation of ECL 17-0501, regulations at 6 NYCRR 703.2, and Respondent's MSGP Part II. C.1.c. of GP-0-17-004 and Part I. B. 2. A. of GP-0-12-001.
9. The landfill has also shown exceedances of the MSGP numeric effluent limitations in 2017.
10. Regulations at 6 NYCRR 750-2.1(e) provide that *"The permittee must comply with all terms and conditions of the permit. Any permit noncompliance constitutes a violation of the Environmental Conservation Law and the Clean Water Act and is grounds for: enforcement action; for permit suspension, revocation or modification; and for denial of a permit renewal application."*
11. ECL 17-0511 provides that *"The use of existing or new outlets or point sources, which discharge sewage, industrial waste or other wastes into waters of this state is prohibited unless such use is in compliance with all standards, criteria, limitations, rules and regulations promulgated or applied by the department pursuant to this article."*
12. Respondent's MSGP states in Part IV.F.3.c.(2) (Monitoring Requirements) of GP-0-17-004, that an exceedance of a Numeric Effluent Limitation is a permit violation. Similar language can be found in Part IV. B. 1. e. 5. of GP-0-12-001.
13. Respondent's exceedances of the effluent limitations are violations of regulations at 6 NYCRR 750-2.1(e), ECL 17-0511, and Respondent's MSGP Part IV.F.3.c.(2) of GP-0-17-004 and Part IV. B. 1. e. 5. of GP-0-12-001. A summary of exceedances is shown below.

Outfall	Parameter	Units	Type	Date	Limit	Result
03DB	Solids, total suspended	mg/L	30DA AVG	12/31/2017	27.0	67
03DB	Zinc, total [as Zn]	mg/L	30DA AVG	12/31/2017	0.11	0.13

Civil Penalty

14 ECL §71-1929 provides for the following civil penalties: “*A person who violates any of the provisions of, or who fails to perform any duty imposed by titles 1 through 11 inclusive and title 19 of article 17, or the rules, regulations, orders or determinations of the commissioner promulgated thereto or the terms of any permit issued there under, shall be liable for a penalty of not to exceed thirty-seven thousand five hundred dollars per day for each violation, and, in addition thereto, such person may be enjoined from continuing such violation as hereinafter provided.*”

Waiver of Hearing

15. Respondent 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

With respect to the aforesaid alleged violations, a civil penalty in the amount of THIRTY ONE THOUSAND THREE HUNDRED FIFTY DOLLARS (\$31,350) of which TWENTY THOUSAND DOLLARS (\$20,000) shall be payable to the New York State Department of Environmental Conservation by money order, or certified check at the time this Order is signed, notarized and returned to the Department.

The balance ELEVEN THOUSAND THREE HUNDRED FIFTY DOLLARS (\$11,350) shall be suspended so long as Respondent shall comply with the Schedule of Compliance.

Payment of the above penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order.

In the event that Respondent fails to comply with the requirements of this Order the entire suspended portion of the penalty shall become due and payable upon written notice to Respondent without prejudicing the Department from seeking further appropriate penalties for violations of this Order by Respondent.

II. Communications

All communications required herein shall be made to: Department -- DEC Region 4, 1130 North Westcott Road, Schenectady, NY 12306, Attention- Regional Water Engineer, derek.thorsland@dec.ny.gov. All communications shall include a reference to the Order on Consent Case Number R4-2018-1002-195.

III. Schedule of Compliance

Respondent shall comply with the Schedule of Compliance set forth in this Order on Consent which is incorporated and made part of the terms, provisions, and conditions of this Order on Consent.

IV. Access

Respondent shall allow duly authorized representatives of DEC access to the facility referred to in this Order without prior notice, at such times as may be desirable or necessary in order for DEC to inspect and determine the status of Respondent's compliance with this Order or the ECL.

V. 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.

VI. Indemnification

Respondent shall indemnify and hold DEC, 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.

VII. Review of Submittals

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 accepts 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.

4. 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.

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. Modification

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

X. Entire Order

The provisions of this Order constitute the complete and entire Order issued to the Respondent concerning resolution of the violations identified herein.

XI. Effective Date

The effective date of this Order shall be the date it is signed by the Regional Director.

XII. Reservation of Rights

Except as specifically provided in this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting:

A. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against Respondent for any other violations of the ECL, rules or regulations promulgated thereunder.

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against anyone other than Respondent, its officers, directors, agents, servants, employees, successors and assigns;

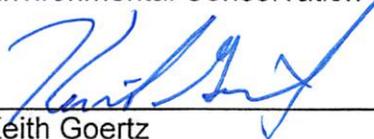
C. Whatever right the Department has to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns with respect to claims for natural resource damages; and

XIII. Respondent's right to assert all available defenses to any claims, actions, proceedings, suits, causes of actions or demands made or commenced by the State or the Department provided, however, that Respondent waives all legal or equitable rights claims, actions, proceedings, appeals, suits, causes of action, defenses or demands whatsoever that it may have to a judicial review of the validity and binding effect of this Order and whether or not this Order has been entered into voluntarily by Respondent.

DATED: February 11 2019
Rotterdam, New York

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director
Region 4

CONSENT BY RESPONDENT

Capital Region Landfills, Inc.

Respondent, Capital Region Landfills, Inc., hereby consents to the issuing and entering of this Order on Consent and waives its right to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

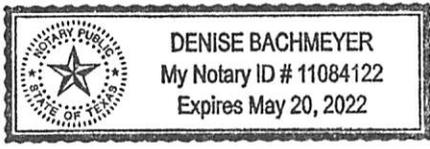
BY: [Signature]
S. V.P. - Engineering + Disposal

DATE: January 31, 2019

STATE OF ~~NEW YORK~~ TEXAS)
ss:
COUNTY OF MONTGOMERY

On the 31 day of January in the year 2019 before me, the undersigned, a Notary Public in and for the State, personally appeared James M. Little, 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual executed the instrument.

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



Schedule of Compliance

1. Respondent shall immediately stabilize the site or install erosion and sediment controls as deemed necessary by a qualified professional to prevent potential impacts to water quality.
2. Within 10 days of the effective day of this Order on Consent, Respondent shall submit a written statement of the actions taken to address the violations and prevent further contravention of standards at Outfall 002 related to the construction activities.
3. Within 30 days of the effective date of this Order on Consent, the Respondent shall submit a summary of the additional Best Management Practices implemented to address the exceedances of both the numeric effluent limitations and benchmark monitoring requirements at Outfalls 002, 03C, and 03D.