

New York State Department of Environmental Conservation

Office of General Counsel, Region 4

1130 North Westcott Road, Schenectady, New York 12306-2014

Phone: (518) 357-2048 • Fax: (518) 357-2087

Website: www.dec.ny.gov



Joe Martens
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7012 3050 0000 4246 2576

May 21, 2014

John A. Spath, Senior Attorney
Town of Colonie
Town Attorney's Office
Memorial Town Hall
P.O. Box 508
Newtonville, NY 12128

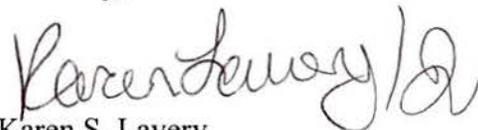
Re: Order of Consent
R4-2014-0402-100

Dear Mr. Spath:

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

This will also acknowledge receipt of \$6,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

cc: T. Robak
V. Schmitt

**STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the Matter of the 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. R4-2014-0402-100

- by -

Town of Colonie
347 Old Niskayuna Road
Latham, NY 12110

Respondent

WHEREAS:

JURISDICTION

1. The Department of Environmental Conservation (“Department”) is empowered to regulate the operation of solid waste management facilities pursuant to ECL Article 27.
2. Respondent, Town of Colonie, is a municipality of the State of New York. Respondent is the owner of the landfill located at 1319 Loudon Road, Cohoes, New York, (Albany County) (“the landfill”).
3. The landfill operates pursuant to Permit No. 4-0126-00033/00001, with an expiration date of December 31, 2017 (“permit”). Respondent has contracted the landfill operation to Waste Connections, LLC.

VIOLATION

4. Permit condition No. 10a of the permit requires the operation of the landfill to be in strict conformance with the Operations and Maintenance Plan (“O&M Plan”), prepared by Sanborn, Head Engineering, P.C., dated August 22, 2013.

Section 9.4 of the O&M Plan requires that daily readings of the flows from the secondary leachate collection system will be taken to document that flows do not exceed the regulatory threshold of 20 gallons per acre per day (“gpad”) based upon a 30 day average. In the event that secondary flows exceed the 20 gpad threshold, the appropriate action will be taken as defined in the Contingency Plan, which is provided for in Part 3 of the O&M Plan. The Response Action Plan (“RAP”) for exceedances of 20 gpad is contained in Section 20 of the Contingency Plan. The RAP requires that when the 20 gpad threshold (based upon a 30 day average), is exceeded, the NYSDEC must be notified within 7 days and immediately implement several measures to assess the cause of the exceedance. A remedial action plan must then be developed based on the assessment, and submitted to NYSDEC within 30 days of notification of the exceedance.

5. On March 3, 2014, the Department received the Town of Colonie Landfill 2013 annual report. The annual report documented that the Action Leakage Rate (“ALR”) for Cell 6 exceeded the 20 gpad (30 day average) threshold for the months of July, November and December 2013. Specifically, the 20 gpad exceedance for July 2013 should have been determined on July 31, 2013 and reported to the Department by August 7, 2013, therefore resulting in 233 days of violation. The 20 gpad exceedance for November and December of 2013 should have been determined on November 30, 2013 and reported to the Department by December 7, 2013, therefore resulting in an additional 111 days of violation.

6. Respondent’s failure to notify the Department of these exceedances is a violation of Permit Condition No. 10a of the permit.

GENERAL

7. 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.

8. Respondent consents to the issuance and entry of the foregoing Order, waives the right to a hearing herein as provided by law, and agrees 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 TWENTY SIX THOUSAND DOLLARS (\$26,000). SIX THOUSAND DOLLARS (\$6,000) of the civil penalty is due upon the return of the signed and notarized copy of this Order to the Department. The balance of the penalty, TWENTY THOUSAND DOLLARS (\$20,000), 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 twenty 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, as it pertains to the landfill.

IV. **SCHEDULE OF COMPLIANCE**

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

V. **FORCE MAJEURE**

If Respondent cannot 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, which relate to the landfill, 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).

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, approved 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, which shall not be less than 30 days. 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 the Department to make it approvable. If Respondent does not accept such modifications, the revised submission will be disapproved and Respondent shall be in violation of this Order. 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. 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.

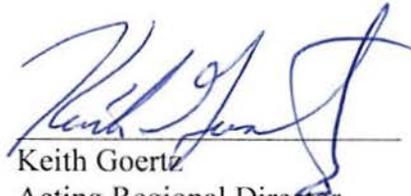
XIV. TERMINATION CLAUSE

This Order shall terminate upon Respondent's compliance with the terms and provisions of the Schedule of Compliance.

DATED: *May 21,* 2014
Rotterdam, New York

Joseph J. Martens
Commissioner
New York State Department of
Environmental Conservation

BY:

A handwritten signature in blue ink, appearing to read "Keith Goertz", written over a horizontal line.

Keith Goertz
Acting Regional Director
Region 4

SCHEDULE OF COMPLIANCE

1. Within 7 days of the effective date of this Order, Respondent shall certify and submit to the Department, all Cell 5 and 6 leachate flow data in table form with 30 day averages, from January 1, 2014 to present.
2. Within 7 days of the effective date of this Order, Respondent shall implement the Response Action Plan as required in the Facility Operation and Maintenance Plan.
3. For a period of 6 months following the effective date of this Order, Respondent must certify and submit to the Department, monthly leachate flow data from Cell 6, in table form with 30 day averages, within 7 days of the end of each monthly reporting period.