

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

Office of General Counsel, Region 4  
1130 North Westcott Road, Schenectady, NY 12306-2014  
P: (518) 357-2048 | F: (518) 357-2087  
[www.dec.ny.gov](http://www.dec.ny.gov)

CONFIRMATION BY EMAIL ORDER RECEIVED

July 16, 2018

John H. Cunningham, Commissioner  
Department of Public Works  
Town of Colonie  
Public Operations Center, 2<sup>nd</sup> Floor  
347 Old Niskayuna Rd  
Latham, NY 12110-2290  
[CunninghamJ@colonie.org](mailto:CunninghamJ@colonie.org)

Re: R4-2018-0531-136  
Order on Consent  
Town of Colonie

Dear Mr. Cunningham:

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

Pursuant to Paragraph I payment of \$30,000 is due within 15 calendar days of the effective date of this order.

Sincerely,



Richard Ostrov  
Regional Attorney  
Region 4

Enclosure

ec: Virginia c. Robbins, Esq.  
J. Whitcomb



Department of  
Environmental  
Conservation

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
-----

In the Matter of the Violations of  
Environmental Conservation Law  
Article 27, Title 7 by:

ORDER ON CONSENT

File No. R4-2018-0531-136

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

Respondent  
-----

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 April 5, 2018 with an expiration date of April 4, 2028 (permit modification).

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

Notice of Violation ("NOV")

4. Department staff sent Respondent a NOV on May 2, 2018 addressing violations of regulations at 6 NYCRR Parts 360, 363 and the permit that were observed during the April 12, 2018 and May 1, 2018 landfill inspections.

5. Respondent completed all compliance actions as required by the NOV:

A. Within 1 calendar day from the date of this notice, all leachate ponding in the drainage swale shall be eliminated.

B. Within 1 calendar day from the date of this notice, the facility shall be inspected for leachate seeps and all seeps and seep impacted stormwater shall be contained within the landfill's leachate collection system. Any discovered leachate seeps must be corrected within 2 calendar days.

C. Within 5 calendar days from the date of this notice, all exposed waste shall be covered with a minimum of six inches of compacted operating cover.

D. Within 7 days of the date of this notice, the Town of Colonie shall update the facility staffing plan. The plan must include contact information for the facility manager(s) and who will be the primary contact if the manager(s) is not on site. The Department shall be notified at least 24 hours prior to any planned absence of all the facility manager(s).

#### Applicable Solid Waste Regulations and Permit Condition

6 6 NYCRR Part 360.19(f) requires that the owner or operator of a facility must ensure that waste at the facility is confined to an area that can be effectively maintained, operated, and controlled.

7. 6 NYCRR Part 363-7.1(b) requires that a minimum of six inches of compacted operating cover be applied to all exposed waste by the close of each operating day.

8. 6 NYCRR Part 360.19(d)(5) requires that all working areas are adequately drained, properly maintained, and standing water is minimized.

9. 6 NYCRR Part 360.19(d)(6) requires that the facility is properly graded to prevent soil erosion and minimize ponding.

10. Permit Condition #26 requires the facility owner or operator to conduct routine inspections of the facility for the presence of leachate seeps. Leachate seeps must be immediately contained within the landfill's collection system and remediated within 48 hours.

#### Violations Cited in the NOV

11. Respondent violated 6 NYCRR Part 360.19(f) by failing to adequately cover the exposed landfill solid waste.

12. Respondent violated 6 NYCRR Part 363-7.1(b) by failing to confine solid waste.

13. Respondent violated 6 NYCRR Part 360.19(d)(5) by the buildup of leachate in the drainage swales.

14. Respondent violated 6 NYCRR Part 360.19(d)(6) by failing to minimize ponded water.

15. Respondent violated Permit Special Condition 26 by not properly addressing the leachate seep.

#### Civil Penalty

16. 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

17. 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 - In respect to the aforesaid alleged violations, a civil penalty in the amount of THIRTY THOUSAND DOLLARS (\$30,000) is assessed against the Respondent. Payment of the civil penalty is due within 15 calendar days of the effective date of this Order.

II. Settlement - Timely payment of the civil penalty and compliance with the terms and conditions of this Order are accepted as full civil settlement of the violations identified in this Order.

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

IV. 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.

V. 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.

VI. 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.

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

DATED: Rotterdam, New York

~~June~~ 2018

July 16

Basil Seggos  
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: July 13, 2018

STATE OF NEW YORK )

COUNTY OF Albany )

) ss.:

On the 13<sup>th</sup> day of July in the year 2018 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.

Michael C. Maggiali

Notary Public  
Qualified in the County of:  
My Commission Expires:

