

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

CERTIFIED - RETURN RECEIPT REQUESTED
7011 1570 0003 0363 4021

February 19, 2016

Kevin Young, Esq.
Young/Sommer LLC
5 Palisades Drive
Albany, NY 12205

Re: Order on Consent
R4-2016-0120-9
Town of Hunter

Dear Mr. Young:

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

This will also acknowledge receipt of \$7000 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

ec: K. O'Connor
R. Mitchell



Department of
Environmental
Conservation

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged
Violations of Environmental
Conservation Law Article 17

-by-

ORDER ON CONSENT
File No. R4-2016-0120-9

Town of Hunter
P.O. Box 70
Tannersville, NY 12485

Respondent

WHEREAS:

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.
2. Respondent, Town of Hunter, is a municipality which owns the Hunter Landfill which contains a leachate treatment system located at Hyland Road, Tannersville, New York.
3. The leachate treatment system is an artificial wetland system operating under a State Pollutant Discharge Elimination System ("SPDES") discharge permit (SPDES # NY-0103187) (DEC # 4-1936-00010/00001). A portion of the effluent is recirculated through the wetland beds and the effluent ultimately discharges to an intermittent tributary of the Schoharie Creek.
4. Respondent is a person as defined at ECL §17-0105(1).

5. ECL §17-0511 states “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.”
6. Regulations at 6 NYCRR Part 750-2.1(e) provide that Respondent is to comply with all the terms and conditions of its SPDES permit.
7. Department staff inspected the facility on December 10, 2015.
8. The SPDES Permit Violations addressed in Appendix A and including violations as of the effective date of the Order. The exceedances including the following parameters:
 - Flow Rate
 - BOD5
 - Total suspended solids
 - Dissolved oxygen
 - Total ammonia nitrogen [as N]
 - Total nitrate nitrogen [as N]
 - Iron, total [as Fe]
 - Manganese, total [as Mn]
 - Copper, total [as Cu]
 - Cadmium, total [as Cd]
 - Lead, total [as Pb]
 - Zinc, total [as Zn]
9. The exceedances outlined in Appendix A are in violation of the permit and are therefore in violation of regulations at 6 NYCRR Part 750-2.1(e).
10. On March 31, 2015, the Equalization Tank was found to be overflowing and the Lower Transfer Tank was found to be overflowing March 31, 2015, which is in violation of ECL §17-0511.
11. 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.”

NOW, having considered this matter and being duly advised, it is ORDERED that:

I. With respect to the aforesaid alleged violations, a civil penalty in the amount of TWENTY SEVEN THOUSAND DOLLARS (\$27,000) of which SEVEN THOUSAND DOLLARS (\$7,000) 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 TWENTY THOUSAND DOLLARS (\$20,000) 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. If Respondent cures the violation within 30 days of the notice and provides acceptable written documentation that the violations have been cured, the suspended penalty will not be due.

II. The provisions of this Order shall be deemed to bind Respondent, its agents, employees, and all persons, firms, corporations acting under or for it.

III. The terms of 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.

IV. 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 the provisions hereof by Respondent, its directors, officers, employees, servants, agents, successors or assigns.

V. 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.

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

VII. The Schedule of Compliance is incorporated into the Order and is enforceable thereunder.

VIII. All communications except where otherwise specifically directed should be sent to:

For Department:
Water Engineer
New York State Department
of Environmental Conservation
Region 4
1130 N. Westcott Road
Schenectady, New York 12306

IX. This Order is deemed effective on the date signed by the Department.

X. 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 or permits issued 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 agents, its servants, its employees, its successors and its assigns;

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

D. 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.

XI. A. Whenever the Department's approval of a submittal under the terms of this Order is required, the Department shall review such submittal 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 applicable state and federal regulations and laws 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 plans and reports shall be incorporated into and become an enforceable part of this Order.

B. 1. If the Department disapproves a submittal, its notice shall specify the reasons for disapproval. Respondent shall make a revised submittal to the Department within thirty (30) days after receiving written notice of disapproval that specifically addresses all of the Department's stated reasons for disapproving the first submittal.

2. After receipt of the revised submittal from Respondent, the Department shall notify Respondents in writing of its approval or disapproval. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order. If the Department disapproves the revised submittal, it shall notify the Respondent in writing and specify its reasons. The Department reserves its right to take whatever action it deems necessary after the second disapproval of a submittal.

XII. Compliance with the terms and conditions of this Order, including the Schedule of Compliance, shall be in full civil settlement of the violations alleged in this Order.

XIII. If more than one Respondent is a signatory to this Order, use of the term "Respondent" in this Order shall be deemed to refer to each Respondent identified in the Order.

XIV. This Order shall not create any presumption of law or fact which shall inure to the benefit of any person other than the Department, State or Respondent.

DATED: February 18 2016
Rotterdam, New York

Basil Seggos
Acting Commissioner
New York State Department of
Environmental Conservation

BY:


Keith Goertz
Regional Director
Region 4

Schedule of Compliance

1. Within 2 months of the effective date of this Order, Respondent shall submit to the Department, an engineering report prepared by a New York State registered professional engineer. The report shall provide a comprehensive evaluation of the treatment system and include a corrective action plan with a schedule to bring the facility into compliance within 12 months of the Department's approval of the engineering report. At a minimum, the report shall evaluate the following:

- The cause of the permit violations;
- The causes of the extreme variability in flow through the stream;
- The actual volume of leachate that must be treated by the system in terms of peak and average flows;
- The treatment capacity of the system, including a plan to meet flow limits;
- The expected useful life of the peat and other system components, in conjunction with a plan for long-term operation and maintenance of the system, and;
- The background concentration of iron, manganese, and other permitted constituents in groundwater upgradient of the landfill and nearby surface water.