

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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CERTIFIED - RETURN RECEIPT REQUESTED
7015 0640 0005 8292 2298

April 28, 2017

Michael J. Biscone, Esq.
Biscone Law Firm
151 Main Street
Ravena, NY 12143

Re: Order on Consent
R4-2017-0310-102
Langemo, LLC

Dear Mr. Biscone:

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

This will also acknowledge receipt of \$7,500 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

ec: J. Weidman
ECO M. Arp



Department of
Environmental
Conservation

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations
of Environmental Conservation Law ("ECL"),
Article 27

Order on Consent
File No. R4-2017-0310-102

-by-

Langemo, LLC
157 Stonitch Road
East Durham, NY 12423

Respondent

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 Lengemo, LLC, owns property located at 157 Stonitch Road, East Durham, New York ("site").

Facts

4. On December 2, 2016, Department staff inspected the site and observed land clearing debris piled approximately 30 feet high with slopes that exceed 25% on the east and south sides of the debris pile. Furthermore, some non-land clearing debris was observed, specifically at least one tire and a section of culvert. Based upon field observations, satellite imagery, and GIS overlays, the eastern and western boundaries of the debris pile appear to be less than 50 feet from the adjacent property line.
5. Respondent did not have authorization to dispose of solid waste.

6. Regulations at 6 NYCRR 360-1.2(a)(1) provides that *“Solid waste means, except as described in paragraph (4) of this subdivision, any garbage, refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility and other discarded materials including solid, liquid, semi-solid, or contained gaseous material, resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 USC 1342, as amended (86 Stat. 880), or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923) except as may be provided by existing agreements between the State of New York and the government of the United States (see section 360-1.3 of this Subpart).”*

7. Regulations at 6 NYCRR 360-1.5 (a) provide that *“Except as provided for in Subparts 360-10 and 360-17 of this Part, no person shall dispose of solid waste in this State except at:*

(1) a disposal facility exempt from the requirements of this Part; or

(2) a disposal facility authorized to accept such waste for disposal pursuant to this Part or to a department-issued or court-issued order.”

8. Respondent violated regulations at 6 NYCRR 360-1.5 (a) by unlawfully disposing of solid waste.

Civil Penalty

9. 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.

Waiver of Hearing

10. Respondent has affirmatively waived its right to notice and hearing in the manner provided by law, and have consented to the issuing and entering of this Order 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. In respect of the aforesaid violations, a civil penalty in the amount of SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500) is assessed against the Respondent for the above violations. The penalty is due with the return of the signed and notarized Order made payable to the Department of Environmental Conservation by bank check.

II. Pursuant to ECL Section 71-0301, the Commissioner specifically reserves the right to exercise summary abatement authority.

III. This Order is binding upon the Respondent, its agents, employees, successors, assigns and to all persons and firms, and corporations acting subordinate thereto.

IV. No change or modification to this Order shall be made or be effective except as may be specifically set forth in writing by the Commissioner or Regional Director. Such application shall be made to the Regional Director.

V. For the purpose of insuring compliance with this Order, duly authorized representatives of this Department shall be permitted access to the site in question in order to inspect and/or require such tests as may be deemed necessary to determine the status of Respondent's compliance herewith.

VI. The effective date of this Order shall be the date upon which it is signed on behalf of the Department.

VII. Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless 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 employees, its servants, its agents, its successors or its assigns.

VIII. 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.

IX. Compliance with the terms and conditions of this Order shall be in full civil settlement of the violations alleged in this Order.

X. 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 submittals shall be incorporated into and become an enforceable part of this Order.

(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 twenty (20) 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 Respondent 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. This shall be considered a violation of the Order. The Respondent reserves its right to contest the alleged violation.

XI. 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.

DATED: *April 27*, 2017
Rotterdam, New York

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director
Region 4

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives its rights to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

Langemo, LLC

SIGNED: Lance Molder

TITLE: Owner

DATE: 4/24/17

STATE OF New York

COUNTY OF Greene,) ss.:

On the 24 day of April in the year 2016 before me, the undersigned, a Notary Public in and for the State, personally appeared Lance Molder 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, or the person upon behalf of which the individual acted, executed the instrument.

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

My Commission Expires June 09, 2020
Qualified in Greene County
No. 01KO6188424
NOTARY PUBLIC-STATE OF NEW YORK
CHRIS KOHRS

CHRIS KOHRS
NOTARY PUBLIC-STATE OF NEW YORK
No. 01KO6188424
Qualified In Greene County
My Commission Expires June 09, 2020

SCHEDULE OF COMPLIANCE

1. As of the effective date of this Order, Respondent shall immediately cease the disposal of any additional land clearing debris at the site. Land clearing debris includes vegetative matter, soil and rock resulting from activities such as land clearing and grubbing, utility line maintenance or seasonal or storm-related cleanup such as trees, stumps, brush and leaves and including wood chips generated from these materials.
2. Within 180 days of the effective date of this Order, Respondent shall cover the entire disturbed area that has been used for disposal purposes. The area must be covered with at least two feet of compacted cover material. The top six inches of this cover material must be capable of sustaining vegetative growth. The final slopes of the landfill must not exceed 25% and must not be less than 2%. Material must be removed as necessary in order to maintain a minimum separation distance of 50 feet between the fill boundaries and the site property line or a public right-of-way. Any non-land clearing debris waste must be removed and disposed of properly and receipts of such disposal must be provided to the Department.
3. Within 30 days of completion of closure of the disturbed area, Respondent shall notify the Department, in writing, that the disturbed area used for disposal purposes, was closed in accordance with the above closure requirements. Records and receipts for all non-land clearing debris removed and disposed of shall also be submitted to the Department within 30 days of completion of closure.